

## **Title 6**

### **ELECTIONS**

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#### **Chapter 01**

### **GENERAL PROVISIONS**

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#### **6.0101 Short title and application.**

Chapters 01 through 12 of this title shall be known and may be cited as the “American Samoa Election Reform Act of 1977” and is applicable to all special, general and runoff elections where issues are presented or Territory-wide candidates, including but not limited to the Governor and Lieutenant Governor and the Delegate-at-Large, and members of the House of Representatives, are elected by secret popular ballot.

**History:** 1977, PL 15-42 § 1.

#### **Case Notes:**

Territorial election statutes provide no right of appeal to board of registration from Chief Election Officer's determination that a person is ineligible to run for elective office. A.S.C.A. §§ 4.0101 et seq., 6.0101 et seq. *Siofele v. Shimasaki*, 9 A.S.R.2d 3.

## **6.0102 Definitions.**

Whenever used in chapters 01 through 12 of this title, the following words and phrases shall, unless it is inconsistent with the context, be construed as follows:

(a) “Absent uniformed services voter” means:

(1) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(2) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and

(3) a spouse or dependent of a member referred to in subparagraph (1) or (2) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

(b) “Ballot”, including an absentee ballot, means a written or printed, or partly written and partly printed paper or papers containing the names of persons to be voted for, the office to be filled, and the questions or issues to be voted on. A ballot may consist of one or more cards or pieces of paper depending on the number of offices, candidates to be elected thereto, questions or issues to be voted on, and the voting system in use.

(c) “Candidate” means an individual who seeks nomination for election, or election to any elective public office.

(d) “Chief Election Officer” means the head of the election office or his designee.

(e) “County” means the counties of Sua, Vaifanua, Saole, Ma’oputasi, Ta’u, Fitiuta, Faleasao, Olosega, Fofu, Itu’au, Ofu, Tualatai, Leasina, Ma’upu and Lealataua.

(f) “District officials” means persons appointed by the Chief Election Officer to serve the purposes of this title.

(g) “Districts” means the representative districts established by law.

(h) “Election” means all elections, general, special, or runoff unless otherwise specifically stated.

(i) “Election officials” or “officers” means persons designated as officials by the Chief Election Officer to perform functions under chapters 01 through 12 of this title.

(j) “Member of the merchant marine” means an individual (other than a member of a uniformed service or an individual employed, enrolled, or maintained on the Great Lakes or the inland waterways):

(1) employed as an officer or crew member of a vessel documented under the laws of the United States, or a vessel owned by the United States, or a vessel of foreign-flag registry under charter to or control of the United States; or

(2) enrolled with the United States for employment or training for employment, or maintained by the United States for emergency relief service, as an officer or crew member of any such vessel.

(k) “Office” means an elective public office.

(l) “Overseas voter” means:

(1) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(2) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(3) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(m) "Qualified electors" means persons duly registered to vote.

(n) "Special election" means any single election required by constitutional provision or by law to be held to fill a vacancy or to determine a special issue and includes the special election of the Governor and Lieutenant Governor on 8 November 1977.

(o) "Voting system" means the use of paper ballots or any system by which votes are cast and counted.

**History:** 1977, PL 15-42 § 1; 1980, PL 16-72 § 2; amd 2002, PL 27-31; amd 2010, PL 31-17.

**Amendments:** 1980 Subsection (b) added.

1985 Subsection (c): deleted Attorney General is set forth in section 6.0103" and added "head of the election office".

## **6.0103 Chief Election Officer-Responsibilities.**

Repealed by PL 19-31 § 8.

### **6.0103.1 Election office-Chief Election Officer-Appointment-Removal-Budget.**

(a) There is established in the executive branch of the American Samoa Government a permanent, independent election office. The election office is headed by the Chief Election Officer, who shall be appointed by the Governor and confirmed by the Legislature.

(b) The term of the first appointed Chief Election Officer shall be four years, commencing on the date of confirmation by the Legislature. All subsequent terms shall be three years, commencing on the date of confirmation. If the Chief Election Officer vacates or for any reason is incapable of performing the duties of the office, the Deputy Chief Election Officer shall be the Acting Chief Election Officer. In no case may the Deputy Chief Election Officer serve as Acting Chief Election Officer for more than 180 days, whether consecutive or not, within one year from the first day served as Acting Chief Election Officer.

(c) The Chief Election Officer must be a person experienced and competent in running an election and records management, and be knowledgeable about election law.

(d) The Chief Election Officer may be removed from office by the Governor, only upon showing of one or more of the following causes: conviction of a felony or misdemeanor; mental or physical incapacity; gross mismanagement; or grossly unethical conduct. The Chief Election Officer is entitled to the same notice and hearing procedures provided for other government employees

(e) The election office shall have its own budget account and be included in the budget procedures of Title 10 A.S.C.A., provided for other executive agencies.

**History:** 1985, PL 19-3 1 § 7.

## **6.0104 Chief Election Officer-Duties.**

(a) The Chief Election Officer shall administer this title. He shall supervise all elections. He may delegate responsibilities in elections to election officials or to other specified persons.

(b) The Chief Election Officer shall be responsible for the maximization of registration of eligible electors throughout the Territory. In maximizing registration, he shall make an effort to equalize registration between districts, with particular effort in those districts in which he determines registration is lower than desirable. In carrying out this function, he may make surveys, carry on house-to-house canvassing, and assist or direct the clerk in any other area of registration.

(c) The Chief Election Officer shall maintain and keep all records and data concerning registered voters, elections, apportionment and districting. He shall use the data to assist in any reapportionment.

(d) No records of any kind may be removed from the election office without the prior approval of the Chief Election Officer or the Chief Election Officer's designee.

**History:** 1977, PL 15-42 § 1; amd 1985, PL 19-31 § 2.

**Amendments:** 1985 Subsection (c): added and keep all records and". Subsection (d) Added.

#### **6.0105            Applicability.**

Chapters 01 through 12 of this title shall apply to all elections, general, special or run-off, held in the Territory, under all voting systems used within the Territory, so far as applicable and not inconsistent herewith.

**History:** 1977, PL 15-42 § 1.

#### **6.0106            Rules.**

(a) The Chief Election Officer may adopt, amend, and repeal rules under the Administrative Procedure Act, section 4.1001 et seq., governing elections held under this title, election procedures, and the selection, establishment, use, and operation of all voting systems now in use or to be adopted in the Territory, and all other similar matters relating thereto as in his judgment shall be necessary to carry out the purposes of this title.

(b) In adopting, amending, and repealing rules for qualified electors who cannot vote at the polls in person and all other qualified electors, the Chief Election Officer shall provide for voting by those persons in a manner as to insure secrecy of the ballot and to preclude tampering with the ballots of these qualified electors and other election frauds. The rules, when adopted in conformity with section 4.1001 et seq., have the force and effect of law.

**History:** 1977, PL 15-42 § 1.

#### **6.0107            Employees.**

(a) The election office shall be staffed by no less than one Deputy Chief Election Officer and one experienced secretary, both selected by the Chief Election Officer, who shall be career service employees.

(b) The Chief Election Officer may employ district officials and other temporary election employees as he may find necessary, none of whom shall be subject to the career service or classification laws of the Territory or be required to become members of the employees' retirement system.

**History:** 1977, PL 15-42 § 1; amd 1985, PL 19-31 § 3.

**Amendments:** 1985 Subsection (a). added. Subsection (b): Original material designated as subsection

(b).

**6.0108 Special elections.**

(a) In case of permanent vacancy in the House of Representatives, the Governor shall call for a special election to fill that vacancy, the special election to occur within 60 days of the date the election call is issued. However, if any vacancy occurs within 3 months of the next regular election, no special election may be held and the Governor shall appoint a qualified person to fill that vacancy. Prior to appointing the person, the Governor shall consult with the county chief or county chiefs in the representative district concerned. A person elected to fill a vacancy or appointed by the Governor to fill a vacancy holds office during the remainder of the term of his predecessor.

(b) In the case of permanent vacancy in the seat of Delegate to the United States House of Representatives, the Governor shall call for a special election to fill that vacancy, the special election to be held within 90 days of the date the election call is issued. However, if any vacancy occurs within 6 months of the next general election, no special election may be held. Prior to appointing the person, the Governor shall consult with the District Governors of the Eastern District, Western District and Manu'a. A person elected to fill a vacancy or appointed by the Governor to fill a vacancy holds office during the remainder of the term of his predecessor.

**History:** 1980, PL 16-72 § 3.

**6.0110 Time of elections.**

Elections of members of the House of Representatives shall be held in each even-numbered year beginning on the first Tuesday following the first Monday of November and ending not later than 3 weeks thereafter.

**History:** 1962, PL 7-28.

## **Chapter 02**

### **REGISTRATION**

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### **I. BOARD**

#### **6.0201 Created—Appointment—Tenure.**

(a) There is created a Board of Registration. The Board, which shall consist of 5 members, shall be appointed by the Governor by and with the advice and consent of the Senate; and the term of office is 4 years.

(b) On election day, 1 member shall be designated to sit in the Manu’a Islands to hear and rule on all appeals.

**History:** 1977, PL 15-42 § 1.

#### **6.0202 Compensation.**

The members of the Board of Registration shall serve without compensation.

**History:** 1977, PL 15-42 § 1.

#### **6.0203 Powers.**

(a) The Board of Registration is given all of the powers and authority for the summoning and examining of witnesses and the maintenance of order, including the power to punish for contempt and award witness fees.

(b) Every member of the Board of Registration may administer oaths in all cases in which oaths are by law authorized.

**History:** 1977, PL 15-42 § 1.

### **II. REGISTRATION**

#### **6.0210 Entitlement to vote.**

A person who registers as required by law shall be entitled to vote at any election and to be listed upon the appropriate general register and district list. The designated election officer shall be responsible for qualified elector registration in the respective districts and the keeping of the general register and district lists.

**History:** 1977, PL 15-42 § 1; 2002, PL 27-31.

**6.0211 Age requirement—Place of registering.**

Every person who has reached the age of 18 years, or who will have reached that age prior to the date of the next election, and is otherwise qualified to register, may do so in the district in which he resides. No person may register or vote in any other district than that in which he resides except as provided in section 6.0220.

**History:** 1977, PL 15-42 § 1.

**6.0212 Rules for determining residency.**

In determining residency in the Territory, spouses may treat themselves separately from one another. The following rules shall determine residency for Territory and district purposes:

(a) The residency of a person is that place in which his habitation is fixed, and to which, whenever he is absent, he has the intention to return.

(b) A person does not gain residency in any district into which he comes without the present intention of establishing his permanent dwelling place within that district.

(c) If a person resides with his family in one place, and does business in another, the former is his place of residence; but any person having a family, who establishes his dwelling place other than with his family, with the intention of remaining there shall be considered a resident where he has established his dwelling place.

(d) The mere intention to acquire a new residence without physical presence at that place does not establish residency, neither does mere physical presence without the concurrent present intention to establish that place as his residence.

(e) A person does not gain or lose a residency solely by reason of his presence or absence while employed in the service of the United States or of this Territory, or while a student of an institution of learning, or while kept in an institution or asylum, or while confined in prison.

(f) The status of a person's primary matai obligations is a factor in determining district residency. However, matai obligations alone may not sustain a finding of district residency absent other evidence which, in connection with evidence of matai obligations, is sufficient to sustain the intent of this section.

(g) A person loses his residence in this Territory if he votes in an election held elsewhere by absentee ballot or in person.

(h) The term of residence is computed by including the day on which the person's residence commences and by excluding the day of election.

(i) In case of question, final determination of residence shall be made by the election officer subject to appeal to the board of registration under sections 6.0201 through 6.0203, 6.0225, and 6.0230 through 6.0233.

**History:** 1977, PL 15-42 § 1; amd 1980, PL 16-72 § 4; amd 2002, PL 27-29.

**Amendments:** 1980 Amended (list sentence to delete references to "wife" and husband". added subsection (f).

**Case Notes:**

Requires more than intention to establish residency: must be physical presence at new place. *Dole v. Attorney General*, ASR (1978).

Under statute providing that a person "does not gain residency in a district without the present intention of establishing his permanent dwelling place within that district, "voter who had moved from one district to another eight years earlier upon inheriting a house, but (1) whose family, church, and business were in the district of his former residence; (2) who had continued to serve matai title and participate actively in aumaga within district of former residence; 93) who had always voted in the former district and never in the district wherein his house was located; and (4) who in the two most recent elections had been a

successful candidate for the Legislature from the district of his former residence, had not established residency in the new district by mere physical presence. A.S.C.A. § 6.0212. Scanlan v. Reed, 9 A.S.R.2d 54 (1988).

A voter who is physically present in a new place of residence, but fails to gain legal residence in that district because he lacks the intention of establishing his permanent dwelling place there, retains his previous legal residence and may vote there. ASCA § 6.0212. Scanlan v. Reed, 9 A.S.R.2d 54 (1988).

One who votes in a foreign election thereby loses his legal residence in American Samoa. A.S.C.A. § 6.0212 (g). Tuika v. Chief Election Officer, 9 A.S.R.2d 57 (1988).

One who loses his legal residence in American Samoa by voting in a foreign election, but who returns to American Samoa with the intention to remain permanently, thereby reacquires his legal residence in American Samoa. A.S.C.A. § 6.0212 (a). Tuika v. Chief Election Officer, 9 A.S.R.2d 57 (1988).

### **6.0213 General register.**

All qualified electors shall be registered by district on the general register. The register shall contain the information required by section 6.0214. The qualified elector's name shall be maintained alphabetically or numerically in the register and be capable of segregation by representative district. The election officer shall keep the original or photographic copy of the affidavit of registration required by section 6.0214. The general register shall, at all times during business hours, be open to public inspection, and is a public record.

**History:** 1977, PL 15-42 § 1; amd 2002, PL 27-31.

### **6.0214 Application to register.**

(a) Except as provided in subsections (d) and (e), any person qualified to and desiring to register as a qualified elector in any district may present himself at any time during business hours to the election officer then and there to be examined under oath as to his qualifications as a qualified elector. All applicants desiring to register shall furnish the election officer with identification duly issued by a governmental agency, containing a photographic likeness of the applicant and shall make and subscribe to an application in the form of an affidavit. The affidavit must contain the following information:

- (1) name;
- (2) Social Security number, if any;
- (3) date of birth;
- (4) age;
- (5) residence;
- (6) place of current employment, if any;

(7) that the residence stated in the affidavit is not simply because of the person's presence in the Territory but that the residence was acquired with the intent to make American Samoa the person's legal residence with all the accompanying obligations therein; and

- (8) that the person is a U.S. citizen or a U.S. national.

(b) The applicant shall swear to the truth of the allegations in his application before the election officer who is authorized to administer oaths. Unless contested by a qualified elector, the election officer may accept as prima facie evidence the allegation of the applicant in information required in the affidavit in paragraph (a)(7). In any other case where the election officer shall so desire or believe it to be expedient, he may demand that the applicant furnish substantiating evidence to the allegations of his application.

(c) If the election officer is satisfied that the applicant is entitled to be registered as a voter, the applicant shall then affix his signature to the affidavit and the election officer shall affix his signature; or he shall enter "unable to sign" and the reason in the space for the applicant's signature. A qualified elector having once been registered shall not be required to register again for any succeeding election, except as hereafter provided. The

affidavits so approved or accepted by the election officer shall thereupon be numbered appropriately; filed by the election officer and kept in some convenient place so as to be open to public inspection and examination.

(d) Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (42 U.S.C. 1973ff et seq.), the foregoing subsections (a) through (c) do not apply to a uniformed services voter and overseas voter desiring to register as a qualified elector in elections for the office of Delegate to the U.S. House of Representatives. The Chief Election Officer shall establish absentee registration and voting procedures to afford maximum access to the polls by qualified absent uniformed services voters and overseas voters. Such procedures shall comply with the Military and Overseas Voter Empowerment Act and shall include at a minimum procedures by which absent uniformed services voters and overseas voters may request by mail, electronically, and by facsimile, voter registration applications and absentee ballot applications with respect to the election for office of Delegate and procedures which allow such voter to designate the preferred means of transmission whether by mail, electronically, or by facsimile.

(e) The foregoing subsections (a) through (c) do not apply to an absent uniformed services voter desiring to register as a qualified elector in elections for the offices of Governor and Lieutenant Governor, and Representative to the American Samoa House of Representatives, provided the applicant's home of record and legal domicile is American Samoa. The Chief Election Officer shall establish absentee registration and voting procedures to afford maximum access to the polls by qualified absent uniformed service voters and shall adopt such forms as necessary to implement the provisions of this act. Such forms shall, at a minimum, require the applicant to furnish the information called for on the Federal Post Card Application (FPCA), supplemented with the applicant's home of record/legal domicile, date of departure from American Samoa, and verification of applicant's active duty military status. In addition to the foregoing, a spouse or dependent of a uniformed services member shall provide verification of their dependent status. The Chief Election Officer shall also establish procedures applicable to elections subsequent to the applicant's initial registration.

**History:** 1977, PL 15-42§ 1; amd 1980, PL 16-72 § 5; amd 2002, PL 27-31; amd 2008, PL 30-19; amd 2010, PL 31-17.

**Amendments:** 1980 Subsection (a): added requirement to furnish identification.

#### **6.0215 Removal from register upon failure to vote-Reregistration.**

(a) The election officer shall, not later than 4:30 p.m. on the 60th day after every general election, remove the name of any qualified elector failing to vote at the election if the voter also failed to vote at the preceding election. For this purpose, "to vote" means the depositing of the ballot in the ballot box whether the ballot is blank or later rejected for any reason. In the case of absentee voting by mail by qualified electors, "to vote" means timely mailing the absentee ballot to the Chief Election Officer whether or not the ballot was counted.

(b) Any qualified elector whose name has been removed from the register may, at any time prior to the closing of the register, as provided in section 6.0222, have his name restored in the register by presenting himself to the election officer and reregistering under section 6.0214, or by making application by mail or otherwise under procedures established by the Chief Election Officer. The election officer shall compare the signature with the signature of the qualified elector as previously registered, and if found by him not to be similar, he may require further proof. The names of all these qualified electors

shall be reentered in the register.

**History:** 1977, PL 15-42 § 1; 2002, PL 27-31.

**6.0216 Registration from one district to another.**

A registered qualified elector who changes his residence from one district to another shall notify the election officer and change his registration to the proper district; provided, that no change of registration may be allowed or required after the close of registration for an election.

**History:** 1977, PL 15-42 § 1.

**6.0217 Registration from one county to another.**

**History:** 1977, PL 15-42 § 1; repealed 2002, PL 27-31 § 32.

**6.0218 Keeping register current-Transfer of registration.**

(a) The election officer shall use all reliable and pertinent information to keep the general register up to date. The election officer may request information from, but is not limited to, the following sources:

- (1) the office of the Attorney General for any change of name;
- (2) courts for any changes of name, divorces, separations, or other changes affecting qualified elector status;
- (3) the record sources for marriages, deaths, or other changes affecting qualified elector status;
- (4) utility agencies concerning commencement or changes of services; and
- (5) apartments and condominiums as to change of occupancy. In requesting the information the election officer shall give reasonable notice and time for furnishing the information.

(b) If the election officer has evidence indicating that a qualified elector's registration should be transferred, then not later than 4:30 p.m. on the 60th day prior to the election the election officer shall notify the person by first-class mail and not later than 4:30 p.m. on the 3rd day thereafter publish in a newspaper or bulletin of general circulation notice of intent to transfer registration. Notice by mail shall be sent to the address shown on the current qualified elector list and any alleged new address. The notifications shall include:

- (1) any evidence that the election officer may have indicating why a transfer or change should be made;
- (2) the residence and district of the qualified elector according to current registration lists;
- (3) the alleged new address and district;
- (4) a reply form which shall contain a space for the qualified elector's agreement or objection to the transfer and the reasons for the objection;

(5) notice that unless the completed form is returned not later than 4:30 p.m. on the 15th day after mailing, the qualified elector shall be subject to challenge at the polls under section 6.0223 on the basis of not being registered in the district where he resides.

(c) If no response is received by the clerk by 4:30 p.m. on the 15th day after mailing, a second notification shall be made not later than 4:30 p.m. on the 30th day prior to the election, by telephone or personal contact if feasible. A record shall be maintained of all the phone calls or attempted personal contacts noting the date, time, person calling, person called, and reply received.

(d) If, on the basis of the evidence available, the clerk has good reason to believe that the qualified elector does actually reside at some address other than the one carried on the registration list, the election officer shall transfer the voter to the new address. A list of those transferred, and the district to which they were moved, will be available at the old district on election day.

(e) A list of all qualified electors with questionable addresses who fail to respond to notification attempts of the election officer, but who have not been transferred, shall be posted at the district wherein he is registered on election day and shall be made available to the public not later than 4:30 p.m. on the 45th day prior to the election.

**History:** 1977, PL 15-42 § 1; amd 1985, PL 19-31 § 4.

**Amendments:** 1985 Subsection (d): deleted provisions relating to voter contesting transfer of voting district.

#### **6.0219 Change of name-Transfer of registration.**

(a) The Chief Election Officer shall take applications for change of name from qualified electors who have been married or who have had their names changed since the last election.

(b) A person whose residence has changed since the last election, and who the election officer has not transferred under section 6.0218 may apply for transfer of his registration to the district of his new residence. Requests to transfer registration to the new district shall be made to the Chief Election Officer no later than 4:30 p.m. on the 30<sup>th</sup> day prior to the election. Where a person was incorrectly placed on a list of qualified electors of a district in which he does not actually reside, he may correct his registration. No person may be prevented from voting at the election in the district in which his name appears on the qualified elector's list due to a change of name, change of registration, or other correction made under this section. However any qualified elector registered in the wrong district who refuses to correct his registration may be challenged. Any person changing his name or transferring shall receive a copy of the change or transfer form.

**History:** 1977, PL 15-42 § 1; 2002, PL 27-31.

#### **6.0220 Changing register-Correction of errors.**

(a) The election officer shall correct the register if at any time it is manifest to him that the name of a person registered has been accidentally misspelled, or that he has been misnamed therein, or that he has been accidentally registered under the wrong district.

(b) In any case where the election officer refuses to correct the register, the person may appeal to the Board of Registration and the registration shall be changed upon a written order of the Board of Registration setting forth the reasons for the change. The order shall be directed to the election officer or to the district officials of the election district where the qualified elector is entitled to vote if the register has been closed. The district officials shall thereupon correct the list of qualified electors furnished them according to the terms of the order, noting on the list the reasons for the correction, and shall send the original order to the election officer as soon as may be possible after the close of the polls. The election officer upon receipt of any order from the Board of registration or from the district officials, as the case may be, shall correct the register according to the terms of the order, making on the register a reference to the order.

**History:** 1977, PL 15-42 § 1.

**6.0221 Changing register-Striking names of disqualified electors.**

(a) Whenever the election officer receives from any recording or informing agency information of the death, loss of voting right of a person sentenced for felony, adjudication of insanity or feeble-mindedness, loss of citizenship or national status, or any other disqualification to vote, of any person registered to vote, or who he has reason to believe may be registered to vote therein, he shall thereupon make an investigation as he considers necessary to prove or disprove the information, giving the person concerned, if available, notice and an opportunity to be heard. If after the investigation he finds that the person is dead, or non compos mentis, or has lost his voting rights, or has lost his citizenship or national status, or is disqualified for any other reason to vote, he shall remove the name of the person from the register.

(b) The election officer shall make and keep an index of all information furnished to him under any requirements of law concerning any of the matters in this section. Whenever any person applies to register as a qualified elector, the election officer shall, before registering the person, consult the index for the purpose of ascertaining whether or not the person is in any manner disqualified to vote. Persons whose names are removed from the register of qualified electors under this section may appeal to the High Court and proceedings shall be had upon the appeal as in other appeals.

**History:** 1977, PL 15-42 § 1; 2002, PL 27-31.

**6.0222 Closing register-List of qualified electors.**

At 4:30 p.m. on the 30th day prior to each election (but if that day is a Saturday, Sunday, or holiday, then at 4:30 p.m. on the first working day immediately following), the general register shall be closed to registration until after the election, subject to change only as provided under 6.0219, 6.0223, and 6.0224, and this section.

**History:** 1977, PL 15-42 § 1; amd 1980, PL 16-72 § 6.

**Amendments:** 1980 Substituted “30th” for “20th” and “following” for “preceding”.

**6.0223 Challenge by qualified electors-Grounds-Procedure.**

(a) Challenging Prior to Election Day. Any registered qualified elector may, for any cause not previously decided by the Board of Registration or the High Court in respect to the same person, challenge the right of that person to be or to remain registered as a qualified elector in any district. The challenge shall be in writing, setting forth the grounds upon which it is based, and be signed by the person making the challenge. The challenge shall be delivered to the election officer who shall immediately serve notice of it on the person challenged. The election officer shall, as soon as possible, investigate and rule on the challenge.

(b) Challenging on Election Day. Any qualified elector rightfully in the polling place may challenge the right of any person, presenting himself to the district officials to vote. The challenge shall be on the grounds that the qualified elector is not the person he alleges himself to be or that the qualified elector is not entitled to vote in that district. No other or further challenge shall be allowed. The challenge shall be considered and decided immediately by the district officials and the ruling announced.

(c) If neither the challenger nor the challenged appeals the ruling of the election officer or the district officials, then the qualified elector shall either be allowed to vote or be prevented from voting in accordance with the ruling. If an appeal is taken to the Board

of Registration, the challenged shall be allowed to vote; provided, that his ballot is placed in a sealed envelope to be later counted or rejected in accordance with the ruling on appeal. The Chief Election Officer shall adopt rules in accordance with 4.1001 et seq., to safeguard the secrecy of the challenge's ballot.

(d) Notwithstanding 6.0902 and 6.0903, the exclusive means of challenging an elector's qualifications subsequent to the elector casting his ballot are as follows:

(1) The challenge must be brought by filing a complaint in the Appellate Division of the High Court, without the necessity of prior review by the Board of Registration.

(2) The complaint must be filed in accordance with the procedural requirements of 6.0902 and 6.0903, and may be filed only by those persons authorized under 6.0902.

(3) It is a condition of any relief granted under this subsection that the complaining party plead and prove, by a preponderance of the evidence, that the facts alleged in support of the complaint were not known to him, and could not with due diligence have been discovered, prior to the challenged elector casting his ballot.

**History:** 1977, PL 15-42 § 1; amd 1980, PL 16-72 § 7.

**Amendments:** 1980 Subsection (d): added.

**Case Notes:**

Sections 6.0223, 6.0224, 6.0230, 6.0902, and 6.0903 provide separate and unrelated remedies to complaints concerning the election process. *Dole v. Attorney General*, ASR (1978).

**6.0224 Appeal to challenge ruling-Failure of election officer to act.**

(a) In cases where the election officer or the district officials ruled on a challenge or the election officer refuses to register an applicant, or, refuses to change the register under section 6.0220, the person ruled against may appeal from the ruling to the Board of Registration.

(b) The Board of Registration shall sit on election day. The Board shall also sit at other times as the election officer determines to hear appeals, provided there are any, from the qualified electors registered. The board shall continue its sitting until all appeals have been heard.

(c) Reasonable notices of the sitting of the Board shall be given by publication in any newspaper or bulletin of general circulation or other news media. If the appeal is sustained, the Board shall immediately certify that finding to the election officer who shall thereupon alter the register to correspond to the findings of the Board, and when necessary, the election officer shall notify the district officials of the change in the register.

**History:** 1977, PL 15-42 § 1.

**Case Notes:**

Where statute provided for appeal to Board of Registration from a denial of voter registration by election officer, and for judicial review of an adverse decision of the Board of Registration, court would not issue writ of mandamus to election officer ordering him to register prospective voter who had not yet appealed to Board of Registration, A.S.C.A. §§ 6.0224, 6.0230. *Siofele v. Shimasaki*, 8 A.S.R.2d 81 (1988).

**6.0225 Records of proceedings.**

The Board of Registration shall keep books of record in which full and detailed minutes shall be preserved of all its proceedings. The minutes shall be kept from day to day, and shall contain:

(1) the date and place of the meeting;

- (2) the names of the members of the Board present;
- (3) the name of each person to whom an oath is administered, and, if an examination is held, the names of the witnesses and the substance of the answers of the applicant and of the witnesses;
- (4) the name of any person challenging the right of any applicant to register, the grounds of challenge, the name of the person challenged, and the decision rendered thereon; and
- (5) all other matters of detail which are likely to have a bearing upon any question concerning the action of the Board or of any person appearing before it.

**History:** 1977, PL 15-42 § 1.

### **III. APPEALS**

#### **6.0230 Appeal from Board to High Court.**

Any affected person or any of the election officials may, not later than 4:30 p.m. on the 10<sup>th</sup> day after the decision of the Board of Registration, appeal directly to the Appellate Division of the High Court in the manner provided by law for civil appeals to the High Court.

**History:** 1977, PL 15-42 § 1.

#### **Case Notes:**

Sections 6.0223, 6.0224, 6.0230, 6.0902 and 6.0903 provide separate and unrelated remedies to complaints concerning the election process. *Dole v. Attorney General*, ASR (1978).

Where statute provided for appeal to board of registration from a denial of voter registration by election officer, and for judicial review of an adverse decision of the Board of Registration, court would not issue writ of mandamus to election officer ordering him to register prospective voter who had not yet appealed to Board of Registration. A.S.C.A. §§ 6.0224, 6.0230. *Siofele v. Shimasaki*, 8 A.S.R.2d 81(1988).

One who challenges the right of another person to be registered or to vote as a qualified elector must exhaust administrative remedies before submitting the matter to court. A.S.C.A. §§ 6.0230 et seq. *Election Office v. Tuika*, 9 A.S.R.2d 1 (1988).

#### **6.0231 Hearing-Decision final.**

When the appeal is perfected, the High Court shall hear the matter as soon thereafter as may be reasonable. The determination by the court is final.

**History:** 1977, PL 15-42 § 1.

#### **6.0232 Notice of decision-Correcting register.**

Immediately upon rendering a decision upon any appeal, the High Court shall notify the Board of Registration, and, if the decision reverses the decision of the Board, the Board shall immediately order the register to be corrected to conform with the decision.

**History:** 1977, PL 15-42 § 1.

#### **6.0233 Status pending appeal.**

In case of an appeal from a decision of the Board of Registration, the name of the person shall be placed or remain upon the register pending the decision of the High Court concerning it. If the person so registered votes at any election before a decision of the court has been made and acted upon, the ballot of that voter shall be handled in accordance with subsection (c) of 6.0223.

**History:** 1977, PL 15-42 § 1.

## **Chapter 03**

### **ISSUES-CANDIDATES**

#### **Sections:**

- 6.0301      Nomination of candidates-Right to registered voter list.**
- 6.0302      Challenging of candidates.**
- 6.0303      Appeal to the High Court.**

#### **6.0301      Nomination of candidates-Right to registered voter list.**

(a) Candidates for membership in the House of Representatives shall be nominated by a petition, in the form established by the Chief Election Officer, signed by at least 25 registered voters of the election district from which he seeks election. Candidates for Delegate to the United States House of Representatives shall also be nominated by petitions, in forms established by the Chief Election Officer, signed by at least 300 registered voters of the Territory.

(b) Blank petitions shall be made available by the Chief Election Officer.

(c) Executed petitions shall be filed with the Chief Election Officer no later than 4:30 p.m. on the 1<sup>st</sup> of September of each election year; or, in the case of a special election, no later than 4:30 p.m. on the 60th day prior to the special election.

(d) The Chief Election Officer shall determine whether the nominated candidates are eligible for election, and shall cause ballots to be printed for each office bearing the names of all qualified nominees.

(e) All candidates for representative approved by the Chief Election Officer shall be entitled to one copy each of the list of qualified electors in his election district and the copy shall be made available no later than 24 hours after the close of voter registration in that election district.

(f) All candidates for Governor and Lieutenant Governor, and Delegate to the United States House of Representatives are entitled to a list of all the qualified electors in the Territory within 10 days after the close of registration for the Territory.

**History:** 1962, PL 7-28; 1972, PL 12-58; amd 1977, PL 15-42 § 3; amd 1980, PL 16-72 § 1; 1996, PL 24-16; amd 2002, PL 27-31; amd 2010, PL 31-17.

**Amendments:** 1977 Substituted “Chief Election Officer” for “Election Commissioner” throughout section.

Subsection (e) added “for representative” at beginning and substituted “qualified electors” for “registered voters”.

Subsection (f): added. 1980 Subsection (c): changed “15 October” to “1 September”.

#### **Case Notes:**

Affirmative duty of chief election officer to determine candidates eligibility. *King v. Watson*, ASR (1978).

Under Statute providing that blank forms for petitions required of candidates for elective office should be distributed by election officer, and also providing that eligibility of candidates should be determined after they had filed the required petitions, election officer had no authority to withhold blank forms from a prospective candidate whom he did not believe to be eligible for election. *A.S.C.A. §§ 6.0301(b), (d). Siofele v. Shimasaki*, 8 A.S.R.2d 81 (1988).

#### **6.0302      Challenging the candidates.**

(a) Any registered qualified elector may, for any cause not previously decided by the Board of Registration or the High Court in respect to the same person, challenge the right

of that person to be a candidate for office in a general or special election. The challenge shall be made no later than 4:30 p.m. on the 3<sup>rd</sup> business day after the Chief Election Officer issues his determination of nominated candidates eligible for election. The challenge shall be in writing, setting forth the grounds upon which it is based, and be signed by the person making the challenge. The challenge shall be delivered to the Chief Election Officer, who shall immediately serve notice of it on the candidate. The Chief Election Officer shall, as soon as possible, investigate and rule on the challenge.

(b) If neither the challenger nor the challenged appeals the ruling of the Chief Election Officer, then the Chief Election Officer shall cause ballots to be printed, bearing the names of all eligible candidates for the office that was challenged. If an appeal is taken to the High Court, then the Chief Election Officer may delay the printing of ballots for the office challenged until a final determination is made.

**History:** 2002, PL 27-31.

#### **6.0303 Appeal to the High Court.**

(a) The challenger or the challenged may, not later 4:30 p.m. on the 5<sup>th</sup> day after the decision of the Chief Election Officer, appeal directly to the Appellate Division of the High Court in the manner provided by law for civil appeals to the High Court.

(b) When the appeal is perfected, the High Court shall hear the matter as soon thereafter as may be reasonable. The determination by the court is final.

**History:** 2002, PL 27-31.

### **Chapter 04**

#### **DISTRICT OFFICIALS**

##### **Sections:**

<b>6.0401</b>	<b>Number.</b>
<b>6.0402</b>	<b>Submission of names and assignments-Vacancies.</b>
<b>6.0403</b>	<b>Instruction.</b>
<b>6.0404</b>	<b>Oaths.</b>
<b>6.0405</b>	<b>Duties.</b>
<b>6.0406</b>	<b>Compensation.</b>

#### **6.0401 Number.**

There shall be 3 or more district officials for each district, 1 of whom shall be the supervisor.

**History:** 1977, PL 15-42 § 1; 2002, PL 27-31.

#### **6.0402 Selection of district officials and assignments-Vacancies.**

(a) Application forms shall be made available by the Chief Election Officer for those persons who wish to serve as district officials on election day. The Secretary of Samoan Affairs or his designee shall submit a list of all local government officials - i.e. fa'alupega, pulenu'u and leoleo nu'u - to the Chief Election Officer not later than 4:30 p.m. on the 10th day prior to the deadline for filing of candidate nomination petitions. The Chief Election Officer shall appoint, from the list of local government officials and the application forms, the district officials by representative district not later than 4:30 p.m. on the 10th day prior to any election.

(b) In assigning the district officials, the following criteria shall be as followed:

(1) The district officials shall be registered qualified electors of the district in which they serve; but if qualified persons in the district are not readily available to serve, they may be chosen from without the district.

(2) The Chief Election Officer may designate more district officials than are needed in order to create a pool of qualified district officials who may be assigned to fill vacancies or to perform those duties as needed in any district. If more qualified persons than are needed for a district desire to serve in that district, service shall be determined by experience in conducting prior elections.

(3) No parent, spouse, child, or sibling of a candidate is eligible to serve as a district official in any district in which votes may be cast for that candidate; nor is any candidate for any elective office eligible to serve as a district official in the same election in which he is a candidate. No candidate who failed of nomination in any election is eligible to serve as a district official in the election next following.

(4) Any individual who has actively campaigned for any candidate in any election shall not be eligible to serve as a district official within the district, or in the Territory-wide elections, in which he had actively campaigned.

(c) In case of inability, failure, or refusal of any person so assigned to serve as a district official, the Chief Election Officer shall appoint a person from the pool of qualified district officials to fill the vacancy.

(d) The Chief Election Officer shall investigate any report of involvement by district officials in campaign activities, and, upon confirming such involvement, shall immediately remove the district official from his official duties.

**History:** 1977, PL 15-42 § 1; amd 2002, PL 27-31.

#### **6.0403 Instruction.**

(a) Not later than 4:30 p.m. on the 5th day prior to any election, the Chief Election Officer shall conduct a school of instruction, if considered necessary, for persons designated as prospective district officials. He shall notify the district officials of the time and place of the school of instruction.

(b) All prospective district officials shall attend a school of instruction. The supervisor of the district officials shall be required to also attend a refresher course before each election. It shall be at the discretion of the Chief Election Officer to require those district officials with previous training to attend a school of instruction prior to each election.

(c) No district official may serve unless he has received instruction and has been certified by the authorized instructor to that effect. This section shall not prevent the assignment of a person who has not received any instruction or certificate but who is otherwise qualified, to fill a vacancy among district officials when a qualified certified person is not available. Periodic recertification shall be required.

**History:** 1977, PL 15-42 § 1; amd 2002, PL 27-31.

#### **6.0404 Oaths.**

Each district official may administer any oath in this chapter provided it be administered by the district officials.

**History:** 1977, PL 15-42 § 1.

#### **6.0405 Duties.**

The duties of the district officials may vary with the voting system in use in the district. The duties for the particular system shall be assigned by the Chief Election

Officer by rules adopted for that purpose.

**History:** 1977, PL 15-42 § 1.

**6.0406 Compensation.**

District officials shall be paid according to fixed rates established for each election by the Chief Election Officer.

**History:** 1977, PL 15-42 § 1; 2002, PL 27-31.

## **Chapter 05**

### **CONDUCT OF ELECTIONS**

**Sections:**

- 6.0501 Proclamations.**
- 6.0502 Polling places.**
- 6.0503 Exemptions of qualified electors on election day.**
- 6.0504 Employees entitled to leave on election day for voting.**
- 6.0505 Records prima facie evidence.**
- 6.0506 Records open to inspection.**
- 6.0507 Forms and materials used in elections.**

**6.0501 Proclamations.**

(a) Not later than 4:30 p.m. on the 10th day prior to the close of filing in elections involving Territorial offices, the Chief Election Officer shall issue an election proclamation.

(b) The proclamation shall contain a statement of the time and places where and the purposes for which the election is to be held, and a designation of the offices and the terms thereof for which candidates are to be elected. It may also contain any other relevant matter including an offer of rewards for the detection and conviction of offenders against the election laws. The Chief Election Officer shall cause the election proclamation to be published at least once in a newspaper or bulletin of general circulation not later than the 10th day prior to the close of filing.

**History:** 1977, PL 15-42 § 1.

**6.0502 Polling places.**

(a) The Chief Election Officer shall specify one or more polling places in each representative district. Schools, police stations, fire stations, and other publicly owned or controlled buildings shall, whenever possible and convenient, be used as polling places. The Chief Election Officer shall make arrangements for the rental or erection of suitable shelters for this purpose whenever public buildings are not available and shall cause those polling places to be equipped with the necessary facilities for lighting, ventilation, and equipment needed for elections on any island. It is lawful for the Chief Election Officer to establish a central polling area for contiguous districts notwithstanding district boundaries, when it is convenient and readily accessible for the qualified electors of the district involved.

(b) Before the establishment of any central polling area, the Chief Election Officer shall publish a notice once in a newspaper or bulletin of general circulation. The notice

shall state the time and place of a hearing under 4.1001 et seq. After the hearing, a rule shall be issued establishing the central polling place.

(c) No change shall be made in the boundaries of any district nor shall a central polling area be established later than 4:30 p.m. on the 90th day prior to an election.

(d) Notwithstanding subsection (c), if the Chief Election Officer determines that the number of candidates or issues on the ballot in a special, general, or runoff election do not require the full number of established districts, the districts may be consolidated for the purposes of the special or general election. A consolidated district shall be considered the same as an established district for all purposes, including district official requirements. Not later than 4:30 p.m. on the 10th day prior to the election, the Chief Election Officer shall give public notice in a newspaper or bulletin of general circulation or by TV or radio in the area in which the election is to be held of the location of the election districts and their polling places. Notices of any consolidation shall also be posted on election day at the established district polling place giving the location of the consolidated election district polling place.

**History:** 1977, PL 15-42 § 1.

#### **6.0503 Exemptions of qualified electors on election day.**

Every qualified elector shall be privileged from arrest on election day while at his polling place and in going to and returning therefrom, except in case of breach of the peace then committed, or in case of treason or felony.

**History:** 1977, PL 15-42 § 1.

#### **6.0504 Employees entitled to leave on election day for voting.**

Any qualified elector shall on the day of the election be entitled to absent himself from any service or employment in which he is then engaged or employed, for a period of 2 consecutive hours (excluding any lunch or rest periods) between the time of opening and closing the polls. The qualified elector shall not because of so absenting himself be liable to any penalty, nor shall any deduction be made on account of the absence from his usual salary or wages; provided, that the foregoing shall not be applicable to any employee whose hours of employment are such that he has a period of 2 consecutive hours (excluding any lunch or rest periods) between the time of opening and closing the polls when he is not working for his employer. If, however, any employee fails to vote after taking time off for that purpose the employer, upon verification of that fact, may make appropriate deductions from the salary or wages of the employee for the period during which the employee is entitled to be absent from his employment. Presentation of a qualified elector's receipt by an employee to his employer shall constitute proof of voting by the employee. Any person violating this section is guilty of an offense under 6.1207.

**History:** 1977, PL 15-42 § 1.

#### **6.0505 Records prima facie evidence.**

Every record made under law by the board of registration, or the district officials, shall be a prima facie evidence of the facts therein set forth, and shall be received as such in any court or tribunal in which it is offered in evidence.

**History:** 1977, PL 15-42 § 1.

**6.0506           Records open to inspection.**

The register of qualified electors and all appertaining to the registry of qualified electors, or to any election, in the possession of the board of registration, the district officials, or the Chief Election Officer shall, at all reasonable times, be open to the inspection of any qualified elector.

**History:** 1977, PL 15-42 § 1.

**6.0507           Forms and materials used in elections.**

Books, blanks, records, certificates, and other forms and materials required by chapters 01 through 12 of this title shall be of uniform character suitable for the voting system in use and shall be prescribed by the Chief Election Officer.

**History:** 1977, PL 15-42 § 1.

**Chapter 06**

**BALLOTS**

**Sections:**

- 6.0601           Official and specimen ballots.**
- 6.0602           Contents of ballot.**
- 6.0603           Form of ballot.**
- 6.0604           Checking ballot form by candidates and parties.**
- 6.0605           Withdrawal of candidates-Disqualification-Death-Notice.**
- 6.0606           Vacancies-New candidates-Insertion of names on ballots and notice at polling places.**
- 6.0607           Printing-Quantity.**
- 6.0608           Distribution of ballots-Record.**
- 6.0609           Distribution of sample ballots.**

**6.0601           Official and specimen ballots.**

Ballots issued by the Chief Election Officer as to Territorial elections are official ballots. The Chief Election Officer, where paper or other type of ballots are used, shall have printed sufficient copies of each of the official ballots to be used in the various districts so that at least 1 copy can be posted for each voting district. These copies will have printed across their face in large bold letters, and with ink of a color contrasting to the color of the paper used, the word "Specimen". The copies of the specimen ballots shall be forwarded to the district officials with the official ballots. The district officials shall post the specimen ballots near the entrance to the voting place where they may be easily seen by the qualified electors prior to voting.

**History:** 1977, PL 15-42 § 1.

**6.0602           Contents of ballot.**

(a) A ballot shall contain the names of the candidates, the offices for which they are running, and the district in which the election is being held. The name of the candidate may be printed with the Samoan or English equivalent or nickname, if the candidate so requests in writing at the time his nomination papers are filed. Candidates' names, including the Samoan or English equivalent or nickname, shall be set on one line in as

large type as the length of the majority of the names will permit. All candidates' names must be in the same height of type face and style.

(b) In multirace districts, the ballot shall state that the qualified elector shall not vote for more than the number of seats available or the number of candidates listed where such number is less than the seats available.

(c) A ballot shall bear no word, motto, device, sign, or symbol other than allowed in this title.

**History:** 1977, PL 15-42 § 1.

#### **6.0603 Form of ballot.**

The form of the ballot shall be determined by the Chief Election Officer. The names of the candidates shall be placed upon the ballot for their respective offices in alphabetical order. In the case of paper ballots or cards where the names of the candidates are printed and the qualified elector records his vote on the face of the ballot, the following format shall be used: A horizontal line shall be ruled between each candidate's name and the next name. Immediately after all the names, on the right-hand side of the ballot, 2 vertical lines shall be ruled, so that in conjunction with the horizontal lines, a box shall be formed opposite each name and its equivalent, if any. The boxes shall be of sufficient size to give ample room in which to designate the choice of the qualified elector in the manner prescribed for the voting system in use. All of the names upon a ballot shall be placed at a uniform distance from the left-hand edge and close thereto, and shall be of uniform size and print subject to section 6.0602.

**History:** 1977, PL 15-42 § 1.

#### **6.0604 Checking ballot form by candidates and parties.**

Facsimiles of all ballot layouts prior to printing shall be available for viewing by the candidates at the office of the Chief Election Officer as soon after the close of filing as they are available. The layout facsimiles shall show the type faces used, the spelling and placement of names, and other information on the ballot.

**History:** 1977, PL 15-42 § 1.

#### **6.0605 Withdrawal of candidates-Disqualification-Death-Notice.**

(a) Any candidate may withdraw not later than 4:30 p.m. on the 3<sup>rd</sup> day after the close of filing for any reason, and may withdraw after the close of filing up to 4:30 p.m. on the 10th day prior to an election for reasons of ill health when the notice is accompanied by a statement from a licensed physician indicating that the ill health may endanger the candidate's life, by giving notice in writing to the Chief Election Officer. Once the notice is received by the Chief Election Officer, the candidate shall not rescind or attempt to rescind the notice of withdrawal.

(b) When a candidate dies, withdraws, or is disqualified after the close of filing and the ballots have been printed, the Chief Election Officer shall either order the candidate's name stricken from the ballot or that a notice of the disqualification, withdrawal, or death be prominently posted at the polling place on election day.

(c) In no case shall the filing fee be refunded after filing.

**History:** 1977, PL 15-42 § 1; amd 2002, PL 27-31.

**6.0606 Vacancies-New candidates-Insertion of names on ballots and notice at polling places.**

In case of death, withdrawal, or disqualification of any candidate after filing, the vacancy so caused may be filled by the Chief Election Officer in the same manner as regular filing not later than the 5th day prior to a general or special election. The name of the replacement shall be printed in an available and appropriate place on the ballot, not necessarily in alphabetical order. A vacancy occurs only when there is less than 1 candidate on the ballot to fill the office. If the substitute candidate is submitted later than the time limits set forth above, it will be in the discretion of the Chief Election Officer whether the name of any substitute candidate is placed on the ballot by reprinting, over printing, the use of rubber stamps, or other means as the Chief Election Officer may consider satisfactory. The district officials shall post a notice at the polling place of the name of the substitute candidate and the office sought. Substitution shall be made not later than 4:30 p.m. on the 2nd day prior to any election unless the Chief Election Officer determines that the name can be placed on the ballot in some practical and effective manner. If no substitution is made, the candidacy involved shall be declared vacant.

**History:** 1977, PL 15-42 § 1.

**6.0607 Printing-Quantity.**

- (a) The ballots shall be printed by order of the Chief Election Officer.
- (b) Each district shall receive a sufficient number of ballots based on the number of registered qualified electors and the expected spoilage in the election concerned.

**History:** 1977, PL 15-42 § 1; amd 2002, PL 27-31.

**6.0608 Distribution of ballots-Record.**

- (a) The Chief Election Officer shall forward the official ballots, specimen ballots, and other materials to the election officials of the various districts. They shall be delivered and kept in a secure fashion in accordance with rules adopted by the Chief Election Officer. In no case shall they arrive later than the opening of the polls on election day.
- (b) A record of the number of ballots sent to each district shall be kept by the Chief Election Officer.

**History:** 1977, PL 15-42 § 1; amd 2002, PL 27-31.

**6.0609 Distribution of sample ballots.**

At least 10 days before the election, the Chief Election Officer may cause sample ballots to be distributed among the qualified electors, so that the electorate will be informed of the names of the candidates, or the issues, or both.

**History:** 1977, PL 15-42 § 1; amd 2002, PL 27-31.

## **Chapter 07**

### **VOTING PROCEDURES**

**Sections:**

**6.0701 Hours polls are open.**

- 6.0702 Admission within polling place.**
- 6.0703 Voting booths—Placement of ballot boxes.**
- 6.0704 Ballot boxes.**
- 6.0705 Procedure upon opening polls.**
- 6.0706 Signature required—Identification.**
- 6.0707 Prohibited acts—Removal or exhibition of ballot.**
- 6.0708 Time allowed.**
- 6.0709 Assistance of illiterate or disabled.**
- 6.0710 Replacement of spoiled ballot.**

**6.0701 Hours polls are open.**

The polls shall be opened by the district officials at 6 a.m. of the election day and shall be kept open continuously until 6 p.m. of that day. If, at the closing hour of voting, any qualified elector desiring to vote is standing in line outside the entrance of the polls with the desire of entering and voting, but due to the polling place being overcrowded has been unable to do so, he shall be allowed to vote irrespective of the closing hour of voting. No qualified elector shall be permitted to enter or join the line after the prescribed hour for closing the polls. If all of the registered qualified electors of the district have cast their votes prior to the closing time, the polls may be closed earlier but the votes shall not be counted until after closing time unless allowed by the Chief Election Officer.

**History:** 1977, PL 15-42 § 1.

**6.0702 Admission within polling place.**

(a) No person, other than the district officials, the candidates or 1 representative appointed in writing by each candidate, and such qualified electors as are for the time being actually engaged in voting or going to and returning therefrom, may be permitted within the polling place and that area surrounding the polling place reasonably calculated to preserve a neutral, peaceful, and quiet atmosphere for the balloting process. No campaign activities, as defined in Section 6.1205 (7) A.S.C.A., shall be allowed within the area described above. Any person, except those persons described above, who remains or loiters within the area immediately surrounding a polling place during the time appointed for voting, or who fails to vacate the polling place and area immediately surrounding it in response to the lawful order of an election official, is guilty of a class B misdemeanor. If a qualified elector is manifestly physically disabled, the qualified elector may be assisted by anyone through the area specified.

(b) Upon application to the Chief Election Officer, the Chief Election Officer may allow nonvoter groups to observe the election for educational purposes. The Chief Election Officer shall use his discretion in granting permission and ensure that persons whose applications are granted may observe the election at designated precincts in a manner that they will not interfere with the election process.

**History:** 1977, PL 15-42 § 1; amd 1980, PL 16-72 § 3; amd 2014, PL 33-15 § 1.

**Amendments:** 1980 Subsection (a): amended generally.

**6.0703 Voting booths—Placement of ballot boxes.**

(a) The district officials shall provide sufficient booths within the polling place at or in which the qualified electors may conveniently cast their ballots. The booths shall be so arranged that in casting the ballots the qualified electors are screened from the

observation of others.

(b) The district officials shall place ballot boxes, where used, at a point convenient for qualified electors to cast their ballots after voting and where the boxes may be observed by the district officials.

**History:** 1977, PL 15-42 § 1.

#### **6.0704 Ballot boxes.**

The Chief Election Officer shall provide suitable ballot boxes for each polling place. The boxes shall be of material selected by the Chief Election Officer. They shall be smooth inside and out and shall have a hinged lid fastened securely by a good lock or locks. In the center of the lid there shall be an aperture of the appropriate size for the voting system used.

**History:** 1977, PL 15-42 § 1.

#### **6.0705 Procedure upon opening polls.**

(a) At the opening of the polls for election, the district officials shall, in the presence of bystanders, publicly open the ballot boxes and expose them to all persons present, that it may be seen that they are empty. They shall then be closed and locked and on no account opened till the polls are closed.

(b) The seals of the ballot containers or packages shall be broken and opened on election day only in the presence of at least 2 district officials.

(c) A card of instruction in both Samoan and English, detailing the method of marking ballots and of voting shall be immediately posted at or in each voting booth. Not less than 3 cards shall be immediately posted in conspicuous places outside the polling place.

**History:** 1977, PL 15-42 § 1.

#### **6.0706 Signature required—Identification.**

(a) Every person upon applying to vote shall sign his name in the poll book prepared for that purpose. This requirement may be waived by any district official if for reasons of illiteracy or blindness or other physical disability the qualified elector is unable to write. Every person shall provide identification if so requested by a district official.

(b) After signing the poll book and receiving his ballot, the qualified elector shall proceed to the voting booth to vote according to the voting system in use in his district. The district official may, and upon request shall, explain to the qualified elector the mode of voting.

**History:** 1977, PL 15-42 § 1.

#### **6.0707 Prohibited acts-Removal or exhibition of ballot.**

(a) No person shall look at or ask to see the contents of the ballot of any qualified elector, except as provided in section 6.0709, nor shall any person within the polling place attempt to influence a qualified elector in regard to whom or what he shall vote for. When a qualified elector is in the voting booth for the purpose of marking or casting his ballot, no other person shall, except as provided in section 6.0709, be allowed to enter the booth or to be in a position from which he can observe how the qualified elector marks or casts his ballot.

(b) All elections of members of the House of Representatives shall be by secret ballot. At each polling place there shall be a voting shelf or compartment at which each voter can mark his ballot in complete privacy, and such other election supplies as are necessary.

(c) In those districts using paper ballots or cards, no person shall take a ballot out of the polling place. After voting, the qualified elector shall leave the voting booth and deliver his ballot to the district official in charge of the ballot boxes. The district official shall make certain that he has received the correct ballot and no other and then shall drop the ballot into the ballot box. If any person having received a ballot leaves the polling place without first delivering the ballot to the district official as provided above, or willfully exhibits his ballot, except as provided in section 6.0709 after the ballot has been marked, shall forfeit his right to vote, and the district officials shall cause a record to be made of the proceeding.

**History:** 1962, PL 7-28; amd 1977, PL 15-42 § 1.

#### **6.0708 Time allowed.**

A qualified elector shall be allowed to remain in the voting booth for 5 minutes, and having voted the qualified elector shall at once emerge and leave the voting booth. If he refuses to leave when so requested by a majority of district officials after the lapse of 5 minutes, he shall be removed by the district officials. Once a qualified elector has completed his voting and emerged from the booth, he shall not be permitted to reenter.

**History:** 1977, PL 15-42 § 1.

#### **6.0709 Assistance of illiterate or disabled.**

(a) Any qualified elector who, by reason of illiteracy or blindness or other physical disability, is unable to mark his ballot, shall, if he so requests, receive the assistance of 2 district officials or of any qualified elector whom he may designate, in the marking thereof. Before rendering assistance or permitting assistance to be rendered, the district officials shall be satisfied that the physical disability exists. If a qualified elector with a physical disability finds it unduly burdensome for him to enter the polling place, he may be handed a ballot outside the polling place but within 100 feet thereof by the district officials and in their presence, but in a secret manner, mark and return it to the district officials.

(b) The district officials shall enter in writing in the record book the following:

- (1) the qualified elector's name;
- (2) the fact that the qualified elector cannot read the names on the ballot, if that is the reason for requiring assistance, and otherwise, the specific physical disability which requires him to receive assistance; and
- (3) the name or names of the person or persons furnishing the assistance.

**History:** 1977, PL 15-42 § 1.

#### **6.0710 Replacement of spoiled ballot.**

In districts using paper ballots or cards, if a qualified elector spoils a ballot or ballot card, he may obtain another upon returning the spoiled one. The ballot returned shall be canceled immediately, and the reasons for the cancellation endorsed thereon and signed by the district officials.

**History:** 1977, PL 15-42 § 1.

## **Chapter 08**

### **VOTE COUNT**

#### **Sections:**

- 6.0801**      **Vote count.**
- 6.0802**      **Method of counting.**
- 6.0803**      **More or less ballots than recorded.**
- 6.0804**      **Records disposition.**
- 6.0805**      **Certification of results of election.**
- 6.0806**      **Certificate of election—Form.**

#### **6.0801**      **Vote count.**

Ballots shall be counted in accordance with this chapter. In districts using paper ballots or cards, a ballot shall be counted even though that ballot has less names voted for than can be elected. If a ballot has more names voted for than can be elected, that ballot shall not be counted.

**History:** 1977, PL 15-42 § 1; amd 2002, PL 27-31.

#### **6.0802**      **Method of counting.**

Immediately after the close of the polls, the district officials shall proceed to count the ballots in the manner as designated by the Chief Election Officer. For each election, the Chief Election Officer shall designate either that the ballot boxes be sealed and forwarded to a central polling place for counting, or that the ballots be counted at the individual polling places. In either case, the ballots shall be counted as follows:

- (a) The whole number of ballots shall first be counted to see if their number corresponds with the number of ballots cast as recorded by the district officials.
- (b) If the number of ballots corresponds with the number of persons recorded by the district officials as having voted, the election officials shall then proceed to count the vote cast for each candidate.
- (c) If there are more ballots or less ballots than the record calls for, the election officials shall proceed under section 6.0803.

**History:** 1977, PL 15-42 § 1; amd 2002, PL 27-31.

#### **6.0803**      **More or less ballots than recorded.**

(a) If there are more ballots than the poll book calls for, this shall be an overage; if less, it shall be an underage. The election officials shall make a note of this fact on a form to be provided by the Chief Election Officer. After making this notation, the election officials shall proceed to count the ballots in the manner provided by law. The form recording the overage or underage shall be sent directly to the Chief Election Officer separate and apart from the other election records.

(b) As soon after the election as possible the Chief Election Officer shall make a list of all districts in which an overage or underage occurred and the amount of the overage or underage. This list shall be posted in the office of the Chief Election Officer. The list is

a public record.

(c) An election contest may be brought under sections 6.0902 and 6.0903 if the overage or underage in any district could affect the outcome of an election.

**History:** 1977, PL 15-42 § 1.

#### **6.0804 Records disposition.**

(a) The final duty of the district officials in the operation of the district shall be to gather all records and supplies delivered to them and return them to the sending official.

(b) The used ballots shall be kept secure and handled only in the presence of authorized persons in accordance with rules adopted for the various voting systems. After all the ballots have been tabulated, they shall be sealed in containers. Thereafter these containers shall be unsealed and resealed only as prescribed by rules governing the elections.

(c) The Chief Election Officer may destroy the ballots and other election records when the Chief Election Officer has certified all elected candidates.

**History:** 1977, PL 15-42 § 1.

#### **6.0805 Certification of results of election.**

On receipt of certified tabulations from the election officials concerned, the Chief Election Officer shall compile, certify, and release the election results. The number of persons to be elected receiving the highest number of votes in any representative district shall be declared to be elected or in the case of territory-wide election of the Governor and Lieutenant Governor, and the Delegate-at-Large, the person or team receiving the highest number of votes in the territory shall be declared to be elected.

**History:** 1977, PL 15-42 § 1.

#### **6.0806 Certificate of election—Form.**

The Chief Election Officer shall deliver certificates of election to the persons elected as determined under section 6.0805. These certificates shall be delivered only after the expiration of the time for bringing an election contest. If there is an election contest, the certificate shall be delivered only after a final determination in the contest has been made and the time for an appeal has expired. The certificate shall be substantially in the following form:

##### **“CERTIFICATE OF ELECTION”**

“I \_\_\_\_\_, Chief Election Officer of American Samoa, do hereby certify that \_\_\_\_\_ was on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, duly elected a \_\_\_\_\_ (name of office) \_\_\_\_\_ for the \_\_\_\_\_ district (or territory) for a term expiring on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_\_\_.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_\_\_.

Chief Election Officer

**History:** 1977, PL 15-42 § 1.

## Chapter 09

### ELECTION CONTESTS

#### Sections:

- 6.0901 Tie vote--Run-off—Decision by lot.**
- 6.0902 Contests for cause-Generally.**
- 6.0903 Contests for cause-Filing complaint.**

#### **6.0901 Tie vote—Run-off—Decision by lot.**

In case of the failure of an election by reason of the equality of vote between 2 or more candidates participating in an election with at least one other candidate, the tie shall be decided by a run-off election held no later than 30 days thereafter, unless an election contest is filed in accordance with 6.0902 and 6.0903. In case of the failure of such run-off election again by reason of the equality of votes between such candidates, the tie shall be decided by lot, under the supervision of the Chief Election Officer. In case of the failure of an election by reason of the equality of vote between 2 or more candidates participating in an election without any other candidate, no run-off election shall be held and the tie shall be directly decided by lot, under the supervision of the Chief Election Officer. When an election is decided by lot, the candidates may agree in a signed statement to be bound by the lot and neither may bring an election contest under sections 6.0902 and 6.0903 after the drawing of the lot. Each candidate shall be present at the drawing of the lot together with 2 witnesses to be selected by him.

**History:** 1977, PL 15-42 § 1; amd 2014, PL 33-15 § 2 .

#### **6.0902 Contests for cause-Generally.**

With respect to any election, any candidate or any 30 qualified electors of the representative district, in case of elections for representatives, and in territory-wide elections any 300 qualified electors may file a complaint in the High Court.

The complaint shall set forth any cause or causes, including but not limited to: provable fraud, overages, or underages, that could cause a difference in the election result. The complaint shall also set forth any reasons for reversing, correcting, or changing the decisions of the district or election officials.

**History:** 1977, PL 15-42 § 1.

#### **Case Notes:**

Sections 6.0223, 6.0224, 6.0230, 6.0902, and 6.0903 provide separate and unrelated remedies to complaints concerning the election process. *Dole v. Attorney General*. ASR (1978).

#### **6.0903 Contests for cause-Filing complaint.**

(a) In general or special elections, the complaint shall be filed in the office of the Clerk of the High Court not later than 4:30 p.m. on the 7th calendar day following the general, special, or runoff election and shall be accompanied by a deposit of \$25 for costs of court. The Clerk shall issue to the defendants named in the complaint a summons to appear and answer before the Appellate Division of the High Court not later than 4:30 p.m. on the 5th day after service thereof.

(b) In cases involving general, special, or runoff elections, the complaint shall be heard by the High Court as soon as it reasonably may be heard. On the return day, the

court, upon its motion or otherwise, may direct summons to be issued to any person who may be interested in the result of the proceedings.

(c) At the hearing, the court shall cause the evidence to be reduced to writing and shall give judgment, stating all findings of fact and conclusions of law. The judgment may invalidate the general, special, or runoff election on the grounds that a correct result cannot be ascertained because of a mistake or fraud on the part of the district or election officials; or because it cannot be determined that a certain candidate, or certain candidates, received a majority or plurality of votes cast and were elected. If the judgment should be that the general or special election was invalid, a certified copy thereof shall be filed with the Governor, and he shall duly call a new election to be held not later than 30 days after the election in dispute. In the interests of justice, the High Court may extend the date for a runoff election, but not later than 16 days following the date fixed by law. If the High Court does not render its judgment in that time, the election shall proceed as certified by the Chief Election Officer. If the court decides which candidate or candidates have been elected, a copy of that judgment shall be served on the Chief Election Officer, who shall sign and deliver to the candidate or candidates certificates of election, and they shall be conclusive of the right of the candidate or candidates to the offices.

**History:** 1977, PL 15-42 § 1.

**Case Notes:**

Subsection (c) is interpreted to mean that the election is to be invalidated only if the number of ineligible ballots cast is equal to or greater than the number of votes by which the leading candidate defeated his closest adversary. *Dole v. Attorney General*, ASR (1978).

Under statute requiring election appeals to be filed by 4:30 p.m., on the seventh calendar day following the election, court had no jurisdiction over an appeal filed at 8:00 p.m. on the seventh day. A.S.C.A. § 6.0903(a). *Tuika v. Chief Election Officer*, 9 A.S.R. 2d 57 (1988).

An election is to be invalidated only if it cannot be determined that a candidate polled a majority or plurality of the valid votes cast on election day. A.S.C.A., § 6.0903. *Faga v. Malepeai*, 23 A.S.R.2d 48 (1992).

## **Chapter 10**

### **EXPENSES**

**Sections:**

**6.1001      Payment for capital equipment.**

**6.1002      Election expenses.**

**6.1001      Payment for capital equipment.**

The government shall pay for all voting system capital equipment. This shall include, but not be limited to, voting machines, if any, ballots, stationery, equipment, and supplies.

**History:** 1977, PL 15-42 § 1.

**6.1002      Election expenses.**

(a) All expenses, including expenses attributable to registration of qualified electors by the election officials for Territorial elections conducted in any district, shall be borne by the government and paid out of those appropriations as may be made by the Legislature for election purposes, under the budget of the election office.

- (b) Expenses in elections shall be borne by the government as follows:
- (1) election officials;
  - (2) instruction of election officials;
  - (3) Board of Registration;
  - (4) polling place costs including supplies, installation, rentals, ballot boxes, voting booths, custodians, telephones, and maintenance;
  - (5) other equipment such as ballot transport containers;
  - (6) temporary election clerks;
  - (7) extraordinary qualified elector registration costs;
  - (8) normal qualified elector registration, qualified electors' list maintenance;
  - (9) maintenance of existing voting machines, if any, including parts, freight, storage, programming, and personnel;
  - (10) all printing, including ballots; and
  - (11) all other costs relating to the operation of voting machines, electronic voting systems, and other voting systems, to include but not be limited to real property rentals, equipment rentals, personnel, mileage, telephones, supplies, publicity, computer programming, and freight.
- (c) The responsibility for supervising the above functions shall be determined by the Chief Election Officer.

**History:** 1977, PL 15-42 § 1; 1985, PL 19-31 § 5.

**Amendments:** 1985 Subsection (a) deleted Attorney General's and added "the" and "of the election office".

## **Chapter 11**

### **ABSENTEE VOTING**

#### **Sections:**

- |               |                                                                                              |
|---------------|----------------------------------------------------------------------------------------------|
| <b>6.1101</b> | <b>Who may vote by absentee ballot.</b>                                                      |
| <b>6.1102</b> | <b>Request for absentee ballot.</b>                                                          |
| <b>6.1103</b> | <b>Delivery of ballots.</b>                                                                  |
| <b>6.1104</b> | <b>Ballot to be enclosed in unsealed reply envelope-Printed instructions to be included.</b> |
| <b>6.1105</b> | <b>Return of ballot.</b>                                                                     |
| <b>6.1106</b> | <b>Absentee ballot container.</b>                                                            |
| <b>6.1107</b> | <b>Absentee qualified elector-polling place.</b>                                             |
| <b>6.1108</b> | <b>Receipt and disposition of absentee ballots.</b>                                          |
| <b>6.1109</b> | <b>Receipt and disposition of late absentee ballots.</b>                                     |
| <b>6.1110</b> | <b>Death of qualified elector prior to opening of polls.</b>                                 |

#### **6.1101 Who may vote by absentee ballot.**

(a) Any qualified elector who will be unable to appear at his polling place during the hours of voting at any election because of absence from the Territory, or district in which he is registered may cause his vote to be cast by absentee ballot subject to this chapter.

(b) Any qualified elector covered by this section shall be entitled and enabled to vote in a manner as may be prescribed by rules adopted by the Chief Election Officer; provided, that any qualified elector who by reason of physical disability is unable to mark his ballot shall be authorized to receive assistance in marking it.

(c) Any qualified elector competent to vote at any election shall be allowed to vote under this section if he falls in the following categories:

- (1) absent from the Territory on election day because he is:
  - (i) employed in the service of the U.S. Government;
  - (ii) employed in the service of the American Samoa Government;
  - (iii) a student at an institution of learning;
  - (iv) an absent uniformed services voter; or
  - (v) an overseas voter voting in the election for Delegate for the U.S. House of Representatives; or
- (vi) only for the elections of November 3, 2020, a qualified elector, who would have otherwise been able to vote in person, but by action of the government was caused to be absent from the Territory and unable to cast a ballot in person;
- (2) temporarily absent from the Territory on election day because of:
  - (i) travel for medical treatment;
  - (ii) travel for military-related assignments;
  - (iii) travel for employment-related training, conference or assignments; or
  - (iv) vacation.
- (3) present in the Territory but absent from the district on election day because of:
  - (i) confinement in any hospital;
  - (ii) confinement in any public institution;
  - (iii) confinement at home because of illness or physical disability which will prevent him from attending the polls;
  - (iv) any religious belief, ruling, doctrine, or standard which will prevent him from attending the polls; or
  - (v) employment as an election official on election day.

**History:** 1977, PL 15-42 § 1; 1996, PL 24-14; 2002, PL 27-31; amd 2010, PL 31-17.; 2020, PL 36-12.

#### **6.1102 Request for absentee ballot.**

(a) Any person entitled to vote under 6.1101(c) (1) may request an absentee ballot in writing from the Chief Election Officer. In addition, such person may transmit such request by mail, electronically, or by facsimile, and designate the preferred means of return transmission whether by mail, electronically, or by facsimile. Any such person may request an absentee ballot not earlier than January 1<sup>st</sup> of the year of the election for which the absentee ballot is requested, and not later than 4:30 p.m. the 15th day prior to the election. The request shall include any information that will facilitate the location of his voting district, the establishment of his right to a ballot, and the address where he wants his ballot forwarded.

(b) Any person entitled to vote under 6.1101 (c) (2) may request an absentee ballot in person or in writing from the Chief Election Officer not earlier than the day that ballots are printed and available and not later than 4:30 p.m. on the day prior to the election. Ballots shall not be mailed, and such qualified electors must vote in person before they travel outside the Territory.

(c) Any person entitled to vote under 6.1101(c)(3) may request an absentee ballot in person or in writing from the Chief Election Officer not earlier than on the 30<sup>th</sup> day prior to the election and not later than 4:30 p.m. on the day prior to the election.

(d) Certification of absentee ballots shall be closed not later than 1:30 p.m. on election day.

**History:** 1977, PL 15-42 § 1; 1989, PL 21-14; 1996, PL 24-14; amd 2002, PL 27-31; amd 2010, PL 31-17.

#### **6.1103 Delivery of ballots.**

Immediately upon receipt of a request within the time limits specified in 6.1102, the Chief Election Officer shall examine the records to ascertain whether or not the qualified elector is lawfully entitled to vote as requested. As soon as official ballots are printed and available, the Chief Election Officer shall:

(a) for those persons entitled to vote under 6.1101(c)(1), mail in a forwarding envelope, via airmail, an official ballot and other materials prescribed in 6.1104. All requests postmarked by the 15<sup>th</sup> day prior to the election shall be processed, and ballots mailed to the qualified electors requesting them as soon as reasonably practicable, but in no event later than 24 hours after receipt of the request;

(b) for those persons entitled to vote under 6.1101(c)(1)(iv) and (v), and who are voting in an election for the Delegate to the U.S. House of Representatives, the Chief Election Officer shall establish procedures by which such absent voters may designate the preferred method of absentee ballot transmission and the Chief Election Officer shall, in accordance with adopted procedures, transmit blank absentee ballots by mail, electronically, and by facsimile as designated by the absent voter, no later than 45 days prior to a general election; and

(c) for those persons entitled to vote under 6.1101 (c) (2) and (3), deliver an official ballot to enable such persons to vote at the designated absentee polling place or in a manner prescribed by rules adopted by the Chief Election Officer.

**History:** 1977, PL 15-42 § 1; amd 2002, PL 27-31; amd 2010, PL 31-17; amd 2014, PL 33-15 § 3.

#### **6.1104 Ballot to be enclosed in unsealed reply envelope-Printed instructions to be included.**

(a) The Chief Election Officer shall enclose the ballot for those persons entitled to vote under 6.1101(c)(1) in an unsealed reply envelope to be furnished by him and which shall be in the form prescribed by him. In addition, the Chief Election Officer shall prepare printed instructions regarding the manner of marking and returning the absentee ballot. The Chief Election Officer shall furnish a copy of the printed instructions and information setting forth the district in which the qualified elector is entitled to vote. The reply envelope shall bear upon the face thereof the name, official title, and post office address of the Chief Election Officer and the words "Absentee Ballot Enclosed". The back of the reply envelope shall contain a statement to be subscribed to by the qualified elector which affirms the fact that he is the person voting.

(b) The absentee qualified elector shall be instructed that his ballot shall not be valid if the affirmation statement is not signed.

**History:** 1977, PL 15-42 § 1; 2002, PL 27-31.

#### **6.1105 Return of ballot.**

The reply envelope shall be:

(1) mailed and must be received by the Chief Election Officer not later than 1:30 p.m. on election day; or

(2) delivered other than by mail to the Chief Election Officer not later than 1:30 p.m. on election day.

**History:** 1977, PL 15-42 § 1; 2002, PL 27-31.

**6.1106 Absentee ballot container.**

(a) Each absentee ballot shall be placed in an absentee ballot container or containers. The container shall be securely sealed except for an opening sufficient to permit deposit of the reply envelopes and shall sufficiently identify the elective office or issue that corresponds to the absentee ballots being deposited. The opening of the container shall be securely sealed at the close of each business day by the Chief Election Officer. The container itself shall be secured in the office of the Chief Election Officer, or in an area, space or facility designated by the Chief Election Officer.

(b) Persons may not open the absentee ballot container before the day and time provided for in 6.1108 or 6.1109. Persons tampering with or opening the absentee ballot container before the prescribed time shall be guilty of an election offense under 6.1206.

**History:** 1977, PL 15-42 § 1; 2002, PL 27-31.

**6.1107 Absentee qualified elector polling place.**

(a) The Chief Election Officer shall establish an absentee polling place. The absentee polling place shall be open before election day to handle the absentee voters who are voting in person. The Chief Election Officer shall determine the number of officials needed. All absentee polling places established to handle absentee qualified electors who are voting in person shall be closed at 4:30 p.m. the day before the election.

(b) The Chief Election Officer may appoint election officials to handle absentee voting in person, for those persons entitled to vote under 6.1101(c)(2) and (3), at the absentee polling place. Election officials may also be appointed to handle absentee voting in person other than at the absentee polling place for those qualified electors who demonstrate that it would be a hardship to require them to appear at the absentee polling place.

**History:** 1977, PL 15-42 § 1; 2002, PL 27-31.

**6.1108 Receipt and disposition of absentee ballots.**

(a) Upon receipt of the envelope marked "Absentee Ballot Enclosed" from persons voting under chapters 01 through 12 of this title, the Chief Election Officer or the election officials of the absentee polling place shall document its receipt and deposit it in the corresponding absentee ballot container. Prior to depositing the envelopes, the envelopes shall be checked for the following:

- (1) sufficiency of statement;
- (2) if the signature corresponds with the absentee request or register;
- (3) if the qualified elector is a registered qualified elector and has complied with the requirements of 6.0214 or 6.0215; and
- (4) if the envelope appears to be tampered with.

(b) Envelopes that meet the above requirements shall be deposited in the corresponding absentee ballot container.

(c) If any of the above requirements is not met, the officials shall mark across the face of the envelope "Questionable", giving the reasons therefor, and the envelope shall be placed unopened in a separate container and disposed of as prescribed for ballots in 6.0804.

(d) Counting of absentee ballots for an issue, and for the offices of Governor &

Lieutenant Governor, and Delegate to the United States House of Representative may begin after 1:30 p.m. on election day. The absentee ballot containers for such issue(s) or offices may be opened no sooner than 1:30 p.m. on election day. Upon opening the containers, the envelopes shall be opened and the ballots counted at the absentee polling place. In no case, however, shall the results of the absentee count become publicly known before the polls have officially closed.

(e) Counting of absentee ballots for each office of Representative to the House of Representatives may begin only after the polls are closed on election day. The absentee ballot container(s) for such offices may be opened no sooner than 4:30 p.m. on the day before the election. Upon opening the container(s), the reply envelopes may be sorted for distribution to polling places designated by the Chief Election Officer. The sorted absentee ballot envelopes must be secured in the ballot boxes for the designated polling places, and may be removed only by the district official upon arrival at and opening of the polls on election day. Reply envelopes containing ballots that are received after the absentee ballot container(s) are opened but no later than the deadline specified in 6.1105, shall be checked for the above requirements of (a)(1) through (4). If the above requirements are met, the envelopes may be sorted and then distributed for counting at polling places designated by the Chief Election Officer.

(f) Persons violating this section shall be guilty of an election offense under chapter 12.

**History:** 1977, PL 15-42 § 1, and 1985, PL 19-31 § 6; 2002, PL 27-31.

**Amendments:** 1985 Subsection (e). Deleted “section 6.1105” and added “chapter 12”.

#### **6.1109 Receipt and disposition of late absentee ballots.**

All reply envelopes containing absentee ballots received by the Chief Election Officer after the deadline for receipt stated in 6.1105 shall be kept unopened and disposed of under 6.0804.

**History:** 1977, PL 15-42 § 1; 2002, PL 27-31.

#### **6.1110 Death of qualified elector prior to opening of polls.**

Whenever, prior to the counting of absentee ballots, it is apparent to the Chief Election Officer or polling place officials that any qualified elector who has marked and forwarded an absentee ballot has died prior to the opening of the polls on election day, the ballot of the qualified elector shall be disposed of in the manner provided in 6.1108 for questionable ballots. The casting of these ballots shall not invalidate the election.

**History:** 1977, PL 15-42 § 1; 2002, PL 27-31.

## **Chapter 12**

### **ELECTION OFFENSES**

#### **Sections:**

- |               |                                                                                |
|---------------|--------------------------------------------------------------------------------|
| <b>6.1201</b> | <b>Classes of offenses.</b>                                                    |
| <b>6.1202</b> | <b>Perjury.</b>                                                                |
| <b>6.1203</b> | <b>Election frauds.</b>                                                        |
| <b>6.1204</b> | <b>Penalties-Disqualification or removal from office-Notice of conviction.</b> |
| <b>6.1205</b> | <b>Misdemeanors.</b>                                                           |

**6.1206      Violation-Penalty.**  
**6.1207      Penalty for other offenses.**

**6.1201      Classes of offenses.**

Except as otherwise provided, offenses against the election laws contained in this title are divided into two classes: “election frauds” and “misdemeanors”.

**History:** 1977, PL 15-42 § 1.

**6.1202      Perjury.**

Any person who, knowing that he is not entitled to register or to vote, registers or votes is guilty of perjury; and any person taking any oath in chapters 01 through 12 of this title prescribed or authorized to be administered and willfully making oath to any false statement of fact, or willfully making a false answer to any question put to him thereunder, is guilty of perjury.

**History:** 1977, PL 15-42 § 1.

**6.1203      Election frauds.**

The following persons are considered guilty of an election fraud:

(1) every person who, directly or indirectly, personally or through another, gives, procures, or lends, or agrees or offers to give, procure, or lend, or who endeavors to procure, any money or office or place of employment or valuable consideration to or for any qualified elector, or to or for any person for a qualified elector, or to or for any person, even if the same is presented in accordance with Samoan custom, in order to induce any qualified elector to vote or refrain from voting, or to vote or refrain from voting for any particular person or issue, or who does any such act on account of any person having voted or refrained from voting for any particular person at any election;

(2) every person who advances or pays, or causes to be paid, any money to, or to the use of, any other person, even if the same is presented in accordance with Samoan custom, with the intent that the money, or any part thereof, shall be expended in bribery at any election, or for any purpose connected with or incidental to any election;

(3) every qualified elector who, before, during, or after any election, directly or indirectly, personally or through another, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place, or employment for himself or any other person, even if the same is accepted in accordance with Samoan custom, for voting or agreeing to vote, or for refraining to vote or agreeing to refrain from voting, or for voting or refraining to vote for any particular person or issue;

(4) every person who, directly or indirectly, personally or through another, makes use of, or threatens to make use of, any force, violence, or restraint; or inflicts or threatens to inflict any injury, damage, or loss in, any manner, or in any way practices intimidation upon or against any person in order to induce or compel the person to vote or refrain from voting, or to vote or refrain from voting for any particular person or party; or who by abduction, distress, or any device or contrivance impedes, prevents, or otherwise interferes with the free exercise of the elective franchise;

(5) every person who, at any election, votes or attempts to vote in the name of any other person, living or dead, or in some fictitious name, or who, having once voted, votes or attempts to vote again, or knowingly gives or attempts to give more than one ballot for the same office at one time of voting;

(6) every person who, before or during an election, knowingly publishes a false statement of the withdrawal of any candidate at the election;

(7) every person who induces or procures any person to withdraw from being a candidate at an election in consideration of any payment or gift or valuable consideration, even if the same is presented in accordance with Samoan custom; or of any threat; and every candidate who withdraws from being a candidate in pursuance of such inducement of procurement;

(8) every public officer by law required to do or perform any act or thing with reference to any of the provisions in any law concerning elections contained who willfully fails, neglects, or refuses to do or perform the same, or who willfully performs it in such a way as to hinder the objects thereof, or who is guilty of any willful violation of any of the provisions thereof;

(9) any person willfully tampering or attempting to tamper with, disarrange, deface, or impair in any manner whatsoever, or destroy any voting equipment while the same is in use at any election, or who, after the equipment is locked in order to preserve the registration or record of any election made by the same, tampers or attempts to tamper with any voting equipment.

**History:** 1977, PL 15-42 § 1; amd 2014, PL 33-15 § 4.

#### **6.1204 Penalties-Disqualification or removal from office-Notice of conviction.**

A person found guilty of an election fraud shall be sentenced upon conviction as for a class A misdemeanor. In addition to the punishment, the person shall be disqualified from voting and from being elected to, holding or occupying any office, elective or appointive. If the person convicted holds any office, either elective or appointive, at the time of the conviction, the office shall at once and without mention in the sentence or other proceeding be vacated by the conviction. The judge before whom the conviction is had shall immediately transmit to the Chief Election Officer the name of the person, the offense of which he has been convicted and the sentence of the court.

**History:** 1977, PL 15-42 § 1; amd 1980, PL 16-90 § 42.

**Amendments:** 1980 Amended to conform to penalties provided for in Title 46, Criminal Justice.

#### **6.1205 Misdemeanors.**

The following persons are guilty of a class B misdemeanor, and upon conviction, sentenced accordingly:

(1) any person who offers any bribe or makes any promise of gain, or with knowledge of the same permits any person to offer any bribe or make any promise of gain for his benefit, to any qualified elector to induce him to sign a nomination paper, and any person who accepts any bribe or promise of gain of any kind as consideration for signing it, whether the bribe or promise of gain is offered or accepted before or after the signing;

(2) any person who willfully tears down or destroys or defaces any election proclamation or any poster or notice or list of qualified electors or card of instructions or specimen ballot, issued or posted by authority of law;

(3) any person printing or duplicating or causing to be printed or duplicated any ballot, conforming as to the size, weight, shape, thickness, or color, to the official ballot so that it could be cast or counted as an official ballot in an election;

(4) every person who is disorderly or creates a disturbance whereby any meeting of the district officials or the Board of Registration of qualified electors during an election is

disturbed or interfered with; or whereby any person who intends to be lawfully present at any meeting or election is prevented from attending; or who causes any disturbance at any election; and every person assisting or aiding or abetting any disturbance;

(5) every person who, either in person or through another, in any manner breaks up or prevents, or endeavors to break up or prevent, the holding of any meeting of the board of registration of qualified electors, or in any manner breaks up or prevents, or endeavors to break up or prevent, the holding of any election;

(6) any person, other than those designated by 6.0702, who remains or loiters within the area specified for voting as set forth in 6.0702 during the time appointed for voting;

(7) any person, including candidates carrying on any campaign activities within the area described in 6.0702 on the day on which an election is being held for the purpose of influencing votes; campaign activities include but are not limited to:

(A) the distribution, circulation, posting, or stacking of campaign cards, pamphlets, and other literature, the erection or placement of bill boards or other signage;

(B) the use of public address systems and other public communication media;

(C) the use of motor caravans or parades or the erection of tents; and

(D) the use of entertainment troupes or the free distribution of goods and services; the “day of election” as used in this paragraph shall commence at midnight on the day the polls are opened and end with the closing of the polls;

(8) any person who opens a reply envelope containing an absentee ballot voted under 6.1101 et seq. other than those authorized to do so;

(9) any qualified elector who makes any false statement in any affidavit required for absentee voting under 6.1101 et seq.;

(10) every person who willfully violates or fails to obey any of the provisions of law, punishment for which is not otherwise specially provided for in chapters 01 through 12 of this title;

(11) any person, including candidates, distributing free food or beverages for the purpose of influencing votes on the day of election; the “day of election” as used in this paragraph shall commence at midnight on the day the polls are opened and end with the closing of the polls.

**History:** 1977, PL 15-42 § 1; amd 1980, PL 16-90 § 43; amd 2014, PL 33-15 § 5.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

#### **6.1206 Violation-Penalty.**

Any person convicted of a misdemeanor under chapters 01 through 12 of this title shall be fined not more than \$500, or imprisoned not more than 6 months, or both.

**History:** 1977, PL 15-42 § 1.

#### **6.1207 Penalty for other offenses.**

A violation of this section is an infraction:

(1) any person, business, or corporation who publishes, shows, broadcasts, or circulates political advertisements or literature without stating the name and address of the person or committee that paid for the advertisement or literature;

(2) any person, business, or corporation who refuses an employee the privileges conferred by 6.0504, or subjects an employee to a penalty or deduction of wages because of the exercise of the privileges, or who directly or indirectly violates 6.0504.

**History:** 1977, PL 15-42 § 1; amd 1980, PL 16-90 § 44.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

## **Chapter 17**

### **ELECTION CONTRIBUTIONS AND EXPENSES**

#### **Sections:**

- 6.1701 Definitions.**
- 6.1702 Campaign Spending Commission.**
- 6.1703 Duties of the Chief Election Officer and Commission.**
- 6.1704 Filing of reports.**
- 6.1705 Registration.**
- 6.1706 Organizational report.**
- 6.1707 Designated central committee.**
- 6.1708 Campaign treasurer.**
- 6.1709 Contributions-Deposit-Itemized record required-Limitations.**
- 6.1710 Contributions-Restrictions against transfer.**
- 6.1711 Anonymous contributions unlawful.**
- 6.1712 Use of another person's name prohibited.**
- 6.1713 Testimonial affairs and coffee hours.**
- 6.1715 Campaign expenditures-Written authorization required.**
- 6.1717 House Bulletins.**
- 6.1718 Preliminary reports.**
- 6.1719 Final and supplemental reports.**
- 6.1720 Disposition of funds.**
- 6.1721 Advertising.**
- 6.1722 Complaints, investigation, and notice.**
- 6.1723 Violation-Penalty.**
- 6.1724 Prosecution.**

#### **6.1701 Definitions.**

As used in this chapter, the following definitions apply:

(a) "Advertisement" means:

(1) any communication exclusive of bumper stickers or other sundry items paid for by or on behalf of a candidate which identifies a candidate directly or by implication or which advocates or supports the nomination for election, or election of the candidate or advocate or supports his defeat; and

(2) any communication exclusive of bumper stickers or other sundry items paid for by or on behalf of a committee which identifies an issue or question which appears or is reasonably certain to appear on the ballot at the next applicable election or which advocates or supports the passage or defeat of the question or issue.

(b) "Campaign treasurer" means a person appointed under 6.1708, and, unless expressly indicated otherwise, includes deputy campaign treasurers.

(c) "Candidate" means an individual who seeks nomination to election, or election, to the Office of the Governor or Lieutenant Governor, or member of the House of Representatives. An individual is a candidate if he does any of the following:

(1) files nomination papers for an office for himself with the Chief Election Officer's office; or

(2) receives contributions in an aggregate amount of more than \$100, or makes or incurs any expenditures to bring about his nomination for election, or election to office; provided, that in no event shall a person be considered a candidate by reason of the provisions set forth in paragraphs (2) and (3) prior to 1 July of the year that person runs for election; or

(3) gives his consent for any other person to receive contributions or make expenditures to aid his nomination for election, or elections, to office.

(d) "Commission" means the Campaign Spending Commission.

(e) "Committee" means:

(1) any person who accepts a contribution or makes an expenditure for or against any candidate, person seeking nomination for election, or election, to office, or party, or who accepts a contribution or makes an expenditure for or against any question or issue which appears or is reasonably certain to appear on the ballot at the next applicable election;

(2) any person who raises or holds money or anything of value and who subsequently contributes the money or thing of value to, or makes expenditures in behalf of a candidate, person, or party; provided, that the term "committee" shall not include any person making a contribution or expenditure of his own funds or thing of value, which he originally acquired for his own use and not for the purpose of evading any provision of this chapter.

(f) "Contribution" means:

(1) a gift, subscription, loan, advance, deposit of money or anything of value, or cancellation of a debt or legal obligation and includes the purchase of tickets to testimonial or fund-raising affairs, for the purpose of:

(A) influencing the nomination for election, or election, of any person to office; or

(B) influencing the outcome of any question or issue which appears or is reasonably certain to appear on the ballot at the next applicable election ; or

(C) use by any party for the purposes set out in subparagraph (A) or (B);

(2) the payment, by any person other than a candidate or committee, of compensation for the personal services of another person which are rendered to the candidate or committee without charge or at an unreasonably low charge; or

(3) a contract, promise, or agreement to make a contribution; provided, that notwithstanding paragraphs (1), (2) and (3), the term shall not include services or portions thereof voluntarily provided without reasonable compensation by individuals or in behalf of a candidate or committee.

(g) "Election" means any election for office or for determining a question or issue provided by law or ordinance.

(h) "Expenditure" means:

(1) any purchase or transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, or payment incurred or made, or the use or consumption of a nonmonetary contribution for the purpose of:

(A) influencing the nomination for election, or election, to office whether or not the person has filed his nomination papers; or

(B) influencing the outcome of any question or issue which appears or is reasonably certain to appear on the ballot at the next applicable election; or

(C) use by any party for the purposes set out in subparagraph (A) or (B) above;

(2) the payment, by any person other than a candidate or committee, of compensation for the personal services of another person which are rendered to the candidate or committee for any of the purposes mentioned in subparagraph (A), (B) or (C) above; or

(3) the expenditure by a candidate of his own funds for the purposes set out in

subparagraph (A), (B) and (C) above.

(i) "House bulletin" means a communication sponsored by any person in the regular course of publication for limited distribution primarily to its employees or members.

(j) "Newspaper" means a publication of general distribution in the territory issued once or more per month which is written and published in the Territory.

(k) "Office" means any elective public or constitutional office.

(l) "Person" means an individual, partnership, committee, association, corporation, or labor union and its auxiliary committees.

**History:** 1977, PL 15-32 § 1; amd 1980, PL 16-72 § 9.

**Amendments:** 1980 Subsection (C): amended to add "of the Governor or Lieutenant Governor or Member of the House of Representatives.

### **6.1702 Campaign Spending Commission.**

There is established a Campaign Spending Commission consisting of 5 members, appointed by the Governor subject to confirmation by the Senate. The term of the members is 4 years and members may be reappointed. Members serve without compensation. Vacancies from unexpired terms are filled in like manner as the original appointments.

**History:** 1977, PL 15-32 § 1;amd 1977, PL 1548 § 1; amd 1980, PL 16-72 § 10.

**Amendments:** 1977 Deleted provision that Chief Justice was a member and chairman of the commission, and added provision that members elect 9th member, who shall be chairman, from the community at large. 1980 deleted 2nd paragraph and amend 1st paragraph generally.

### **6.1703 Duties of the Chief Election Officer and Commission.**

(a) The Chief Election Officer's principal duty is to regulate the election process, and under this chapter his duties are to:

(1) develop and adopt reporting forms required by this chapter;

(2) adopt and publish a manual for all candidates and committees, describing the requirements of this chapter, including uniform and simple methods of recordkeeping;

(3) preserve all reports required by this chapter for at least 5 years from the date of receipt;

(4) permit the inspection, copying, or duplicating of any report required by this chapter under rules adopted by the Commission; provided, that no information or copies from the report shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose.

(b) The Commission's principal duty is to supervise campaign contributions and expenditures, and under this chapter its duties are to:

(1) ascertain whether any candidate, committee, or party has failed to file a report required by this chapter or has filed a substantially defective or deficient report, and to notify the persons that their failure to file or filing of a substantially defective or deficient report must be corrected and explained, the correction or explanation to be submitted in writing to the Commission within a reasonable time after the notification of the failure to file or deficiency; the Commission shall make available a list of candidates, committees, and parties who have failed to correct their deficiency within the time allowed by the Commission, failure to respond to the notification shall constitute a violation of this chapter;

(2) hold public hearings;

- (3) investigate and hold hearings for receiving evidence of any violations;
  - (4) adopt a code of fair campaign practices;
  - (5) establish rules under 4.1001 et seq.;
  - (6) request the initiation of prosecution for the violation of this chapter under 6.1724;
- and
- (7) suggest accounting methods for candidates, parties, and committees, as the Commission may consider advisable, in connection with reports and records required by this chapter.

**History:** 1977, PL 15-32 § 1.

#### **6.1704 Filing of reports.**

(a) Reports required to be filed under this chapter by a candidate or committee supporting a candidate with his consent shall be certified by the candidate. Reports required to be filed under this chapter by a party or committee which supports more than 1 candidate shall be certified by the party or committee treasurer, or the deputy treasurer, or the chairman thereof, in that order. Reports required to be filed shall be open for public inspection.

(b) Reports required by this chapter shall be filed as follows: The original and 1 copy shall be filed at the Commission office.

(c) The Commission shall give each person filing a report a receipt showing the type of report and date and time of filing.

(d) The reports filed shall be preserved for 5 years.

(e) Reports required to be filed shall at all times be available to the Chief Election Officer.

**History:** 1977, PL 15-32 § 1.

#### **6.1705 Registration.**

Each candidate, committee, and party shall file an organizational report not later than 4:30 p.m. on the earliest of the following applicable days:

- (1) on or before the day of filing for nomination or election;
- (2) at least 45 days before the general, or special election; or
- (3) by the 10th day after:
  - (A) receiving any contributions in an aggregate amount of more than \$100; or
  - (B) making or incurring any expenditure which is reportable under 6.1718 and 6.1719.

**History:** 1977, PL 15-32 § 1.

#### **6.1706 Organizational report.**

(a) The organizational report includes:

(1) the name, address, office sought when known, and party affiliation of each candidate or individual whom the committee or party is supporting and the name and address of the committee or party;

(2) the names and addresses of the campaign treasurer and deputies;

(3) the names and addresses of the campaign chairman and deputy campaign chairman;

(4) a list of all banks, safety deposit boxes, or other depositories used and the applicable account numbers;

(5) the amount and date of deposit of the contribution and the name and address of

each individual donor who has contributed an aggregate amount of more than \$100 to the office being sought; provided, that this paragraph shall not apply to contributions made prior to 1 July 1977; and

(6) in the case of a report by a committee or party supporting or opposing a ballot question or issue, all of the information described in paragraphs (a) (2) to (a) (5) and a description of the question or issue.

(b) Any change in information submitted in the organizational report, other than paragraph (a) (5), shall be reported not later than 4:30 p.m. on the 10th calendar day after the change or when the candidate, committee, party, or campaign treasurer becomes aware of the change.

**History:** 1977, PL 15-32 § 1.

#### **6.1707 Designated central committee.**

Each candidate for a Territory-wide or representative office who is supported by more than 1 committee shall designate a central committee which shall be responsible for aggregating the total contributions and expenditures of all committees directly associated with the candidate and for filing composite reports indicating this information on the dates set by 6.1718 and 6.1719.

**History:** 1977, PL 15-32 § 1.

#### **6.1708 Campaign treasurer.**

(a) Every committee, party, and candidate shall appoint a campaign treasurer on or before the day for filing an organizational report. Up to 2 deputy campaign treasurers may be appointed. A candidate may appoint himself as campaign treasurer.

(b) A campaign treasurer may be removed at any time. In case of death, resignation, or removal of the campaign treasurer, the committee, party, or candidate shall promptly appoint a successor. During the period the office of campaign treasurer is vacant, the candidate, committee chairman, or party chairman, whichever is applicable, shall serve as campaign treasurer.

(c) Each campaign treasurer shall be authorized to receive contributions or make expenditures on behalf of the candidate, committee, or party appointing him.

**History:** 1977, PL 15-32 § 1.

#### **6.1709 Contributions-Deposit-Itemized record required—Limitations.**

(a) Monetary contributions shall be promptly deposited in a financial depository duly authorized to do business in the territory, such as a bank, savings and loan institution, industrial loan company, or similar financial institution, in the name of the candidate, committee, or party, whichever is applicable.

(b) Each candidate, committee, or party shall establish and maintain an itemized record showing the amount of all monetary contributions, the description and value of each nonmonetary contribution, and the name and address of each donor making a contribution.

(c) Each candidate and campaign treasurer shall report the amount and date of deposit of each contribution and the name and address of each donor who makes a contribution or contributions whose aggregate value is \$100 or more.

(d) No candidate, committee, or party may accept a contribution of \$100 in cash from a single person without issuing a receipt to the donor and keeping a record of the

transaction.

(e) Each committee and party shall disclose the original source of all earmarked funds, the ultimate recipient of the earmarked funds, and the fact that the funds are earmarked.

(f) For the purposes of this section, "earmarked funds" means contributions received by a committee or party on the condition that the funds be contributed to or expended only on certain candidates, issues, or questions.

(g) The following contributions are the maximum permissible:

(1) corporations, partnerships, joint ventures or any business or organization, \$2,000; and

(2) individuals, \$500.

**History:** 1977, PL 15-32 § 1; amd 1980, PL 16-72 § 11; 2002, PL 27-31.

**Amendments:** 1980 Subsection (g): deleted paragraph (1) and renumbered (2) and (3) as (1) and (2).

#### **6.1710 Contributions-Restrictions against transfer.**

(a) A candidate, campaign treasurer, or committee shall not receive any contributions, make any expenditures, or receive or make any transfer of money or anything of value:

(1) for any purpose other than those directly related:

(A) in the case of the candidate, to his own campaign; or

(B) in the case of a campaign treasurer or committee, to the campaign of the candidate, question, or issue with which they are directly associated; or

(2) to support the campaigns of candidates other than the candidate, for whom the funds were collected or with whom the campaign treasurer or committee is directly associated; or

(3) to campaign against any other candidate not directly opposing the candidate for whom the funds were collected or with whom the campaign treasurer or committee is directly associated; provided, that a candidate, campaign treasurer or committee may purchase from its campaign fund not more than 2 tickets for each testimonial or fundraising affair as defined in 6.1713 and 6.1714, respectively, held by another candidate, committee, or party.

(b) This section may not be construed to prohibit a party from supporting more than 1 candidate, or, to prohibit joint expenditure by 2 or more candidates seeking election to multiple offices from the same district whether the expenditures are equally or unequally incurred among those candidates; provided, that the allocation of expenditures between the candidates is based upon reasonable objective standards. The party or candidates, whichever is applicable, shall make the initial allocation between candidates. If the allocation is disallowed by the Commission, and the allocation of expenditures is not corrected as prescribed by the Commission within the time allowed by the Commission, then the amount of the allocation found to be unreasonable by the Commission shall be presumed to be a transfer of funds in violation of this section.

**History:** 1977, PL 15-32 § 1.

#### **6.1711 Anonymous contributions unlawful.**

(a) No person may make a contribution of his own money or property or money of another person to any candidate, party, or committee in connection with a nomination for election, or election, anonymously; nor may any candidate, party, or committee knowingly receive, accept, or retain the contribution or enter or cause the same to be entered in its accounts as an anonymous contribution or in another name than that of the

person by whom it was actually furnished.

(b) Anonymous contributions received by a candidate, party, or committee shall not be used or expended, but shall be returned to the donor. If the donor cannot be identified, the contribution shall escheat to the Territory.

(c) This section does not apply to amounts that aggregate less than \$250 when obtained through multiple contributions made by 10 or more persons at the same event. Each aggregate contribution shall be reported accompanied by a description of the means, method, place, and date of receipt.

**History:** 1977, PL 15-32 § 1.

#### **6.1712 Use of another person's name prohibited.**

(a) Persons may not make contributions of their own money or property or money or property of another person to any candidate, party, or committee in connection with a nomination for election, or election, in any other name than the name of the person owning the money or who supplied the money or property.

(b) Contributions made in the name of a person other than the true or established name of the actual owner of the money or property shall escheat to the Territory.

**History:** 1977, PL 15-32 § 1.

#### **6.1713 Testimonial affairs and coffee hours.**

(a) As used in this section, "testimonial affair" means any function held for the benefit of a person and designed to raise funds for political purposes for which the total cost for attending the affair is more than \$15 a person.

(b) No person or a committee directly associated with the person shall hold more than one testimonial affair until after an election in which that person was either elected or defeated unless that person seeks election to Territorial office, in which case he or his directly associated committees may hold no more than 3 testimonial affairs in each county. An additional testimonial affair may be held within 6 months after a general, or special election, in the case of a candidate or committee directly associated with that person having a deficit. No testimonial affair may be held unless a notice of intent to hold the affair is filed by the person in charge of the affair with the commission prior to the date of the affair setting forth the name and address of the person in charge, the charge per person, the date, hour, and place of the affair and whether contributions will be solicited at the affair and method thereof. Testimonial affairs sponsored by a party for a political purpose for the general benefit of the party are exempt from the limits of this subsection.

(c) The number of functions held for the benefit of a person designed to raise funds for political purposes for which the total cost for attending the affair is \$15 or less per person shall not be limited except:

(1) For territorial offices, no person may hold more than 2 functions in each district.

(2) For all other offices, a person may hold either 2 functions or 1 testimonial affair in each district.

**History:** 1977, PL 15-32 § 1; and 1980, PL 16-72 § 12.

**Amendments:** 1980 Subsection (a): deleted paragraph (2). Subsection (c): deleted and relettered existing subsection (d) as(c).

**6.1715 Campaign expenditures—Written authorization required.**

(a) A candidate may draw on the campaign treasurer for his political expenditures for postage, telegrams, telephone calls, stationery, expressage, travel, meals, and lodging. The candidate shall make a detailed accounting of his political expenditures and the accounting shall be made a part of the reports required in 6.1718 and 6.1719. The account shall state the amount and the purpose of the expenditures and other information required by the Commission and shall be signed and certified by the campaign treasurer.

(b) No funds shall be withdrawn or paid from a campaign depository except upon the written authorization of the campaign treasurer.

(c) No expenditure by or on behalf of a candidate shall be made or incurred by any committee without specific written authorization of the candidate or his authorized representative. Every expenditure so authorized and made or incurred shall be attributed to the candidate for whom the expenditure is made for the purpose of imposing the expenditure limitations imposed by § 1616.

**History:** 1977, PL 15-32 § 1.

**Reviser's Comment:** § 1616 (19 ASC 1616) was repealed by PL 16-7 2.

**6.1717 House bulletins.**

The cost of preparing, printing, and circulating house bulletins and the writings, drawings, and photographs contained therein, except for paid political advertisements, shall be exempt from the provisions of this chapter.

**History:** 1977, PL 15-32 § 1.

**6.1718 Preliminary reports.**

(a) Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall file a preliminary report with the Commission on forms provided by the Commission not later than 4:30 p.m. of the 10th calendar day prior to each election. The report shall be certified under 6.1704 and shall contain the following information which is current through the 15th calendar day prior to the election:

- (1) The aggregate sum of all contributions received;
- (2) the amount and date of deposit of the contribution and the name and address of each donor who contributes an aggregate of \$100 or more;
- (3) all expenditures made, incurred, or authorized by or for a candidate including the name and address of each payee and the amount, date, and purpose of each expenditure; and
- (4) a current statement of the balance on hand or deficit.

(b) Notwithstanding this section, a candidate or committee which makes expenditures of \$500 or less may file a short form report with the Commission in lieu of the reports required by this section and 6.1719.

**History:** 1977, PL 15-32 § 1.

**6.1719 Final and supplemental reports.**

(a) Each candidate whether or not successful in a general, special, or runoff election, authorized person in the case of a party, or campaign treasurer in the case of a committee directly associated with a candidate, shall file a final report not later than 4:30 p.m. on the 20th day after the general, special, or runoff election is certified. The report shall include:

- (1) a statement of the total contributions received;
- (2) the amount and date of deposit of the contribution and the name and address of each donor who contributes an aggregate of \$100 or more;
- (3) a statement of all expenditures made or incurred by or for a candidate including the name of each payee and the amount, date, and purpose of each expenditure; and

- (4) a statement of the balance on hand or deficit.

(b) Deficit. In the event of a deficit, the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall, every 3 months until the deficit is eliminated, file supplemental reports reporting all items prescribed in subsection (a). The first report is due not later than 4:30 p.m. on the 5th day after the last day of the election year.

(c) Surplus. In the event of a surplus the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall:

- (1) maintain the cash surplus in a financial depository; and
- (2) Every 6 months, until he becomes a candidate again, file supplemental reports reporting all items prescribed in subsection (a).

The first report shall be due not later than 4:30 p.m. on the 5th day after the last day of the election year.

(d) A candidate, party, or committee who receives no contributions or makes no expenditures shall nevertheless file preliminary, final, and supplemental reports as required by law.

**History:** 1977, PL 15-32 § 1.

#### **6.1720 Disposition of funds.**

(a) Candidates who withdraw or cease to be candidates or committees directly associated with these candidates, individuals who receive contributions but fail to file for nomination, or committees or parties which discontinue their activities covered in this chapter, shall return any residual contributions proportionately to the donors if their identities are known. This subsection does not apply to elected officials or candidates who failed to be elected.

(b) If no donors are found, the residual contributions shall be contributed to the campaign fund of any candidate, or to any party, charity, or nonprofit organization or escheated to the Territory.

(c) Upon disposition, the candidate or campaign treasurer shall file a report with the commission reporting the amounts distributed under this section and the manner of disposition.

**History:** 1977, PL 15-32 § 1.

#### **6.1721 Advertising.**

(a) No person may cause or submit any advertisement in support for a candidate or against a candidate's opponent, to be broadcast, televised, or otherwise circulated and distributed except under the following conditions:

- (1) The advertisement shall contain a notice in a prominent location that the literature or advertisement is published, broadcast, televised, or circulated with the approval and authority of the candidate, provided that in the event that the literature or advertisement is paid for by a candidate or committee directly associated with a candidate, the notice of approval and authority need not be included; or

(2) The advertisement shall contain a notice in a prominent location that the literature or advertisement is published, broadcast, televised, or circulated without the approval and authority of the candidate.

(b) All advertisements mentioned in subsection (a) shall contain the name and address of the candidate, committee, or party paying for it.

**History:** 1977, PL 15-32 § 1.

#### **6.1722 Complaints, investigation, and notice.**

(a) Complaints of violations of this chapter against any person shall be filed with the Commission. The complaint shall be in writing and shall be signed under oath by the complainant. Complaints initiated by the Commission shall be in writing and signed by the chairman.

(b) The Commission shall give notice of receipt of the complaint together with a copy of the complaint to the person cited and shall afford him an opportunity to explain or otherwise respond to the complaint. The Commission may also cause an investigation to be made of the complaint.

(c) Upon hearing the response of the person cited, if he elects to respond to the complaint, and upon completion of any investigation, the Commission shall make a prompt determination as to whether probable cause exists that a violation has been committed.

(1) Persons who appear before the Commission shall have all of the rights, privileges, and responsibilities of a witness appearing before the courts of the Territory. Witnesses summoned before the Commission shall receive reimbursement as paid in like circumstances in the courts of this Territory. Persons whose names are mentioned during a proceeding of the Commission, and who may be adversely affected thereby, may appear personally before the Commission on their own behalf or file a written statement for incorporation into the record of the proceeding.

(2) The Commission shall cause a record to be made of all proceedings under this subsection. At the conclusion of proceedings concerning an alleged violation the Commission shall immediately begin deliberations on the evidence and then proceed to determine by majority vote of the members whether probable cause exists that a violation has been committed.

(d) Until the determination of probable cause by the Commission, all proceedings, including the filing of the complaint, investigation, and hearing shall be confidential unless the person complained of requests an open session. In the event the Commission determines that probable cause does not exist, then the complaint shall be dismissed and the entire record of the proceedings shall be kept confidential at the option of the person complained of.

(e) The Commission shall give written notice to the person complained of and to the complainant as to whether probable cause of a violation exists or whether the complaint has been dismissed.

(f) In the event a determination is made that probable cause of willful violation exists, the Commission shall promptly advise the Chief Election Officer of its findings. In the event a determination is made that probable cause of an unintentional violation exists, the Commission shall issue a confidential order that may require the violator to:

(1) temporarily cease and desist violation of this chapter; or

(2) file any report, statement, or other information as required by this chapter.

(g) The Commission may only initiate prosecution as provided in 6.1724 when it finds

that probable cause of a willful violation exists.

**History:** 1977, PL 15-32 § 1.

**6.1723 Violation—Penalty.**

(a) Persons knowingly violating any provision of this chapter shall, unless otherwise expressly stated, be punishable in the manner prescribed as follows:

(1) if a natural person, he shall be guilty of a class B misdemeanor and shall be upon conviction sentenced accordingly; or

(2) if a corporation, organization, or association, it shall be upon conviction sentenced accordingly; and

(3) Whenever a corporation, organization, or association violates this chapter, the violation shall be considered to be also that of the individual directors, officers, or agents of the corporation, organization, or association, who have knowingly authorized, ordered, or done any of the acts constituting the violation.

(b) Persons may sue for injunctive relief to compel compliance with this chapter.

**History:** 1977, PL 15.32 § 1; amd 1980, PL 16-90 § 45.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

**6.1724 Prosecution.**

(a) For purposes of prosecution for violations of this chapter, the Office of the Attorney General has jurisdiction to be exercised as follows:

(1) Prosecution shall commence with a written request from the Commission or upon the issuance of an order of the court; and

(2) In the case of all offices, parties, or issues, the Attorney General shall prosecute any violation.

(b) The court shall give priority to the expeditious processing of suits under this section.

(c) Prosecuting for violation of any provision of this chapter shall not be commenced after 1 year has elapsed from the date of the violation or date of filing of the report covering the period in which the violation occurred, whichever is later.

**History:** 1977, PL 15-32 § 1.